

Department of Homeland Security

§ 214.1

the date the benefit was first provided to the immigrant.

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, USCIS will consider a sponsor or joint sponsor to be in compliance with the financial obligations of section 213A of the Act unless a party that has obtained a final judgment enforcing the sponsor or joint sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act has provided a copy of the final judgment to the USCIS by mailing a certified copy to the address listed in paragraph (c)(3) of this section. The copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act." Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(2) If a Federal, state, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the address listed in paragraph (c)(3) of this section. The written notice should include the reference "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

(3) The address referred to in paragraphs (c)(1) and (c)(2) of this section is: Office of Program and Regulation Development, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC, 20529.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35755, June 21, 2006; 76 FR 53790, Aug. 29, 2011]

§ 213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of other affidavits of support provided by USCIS in a case other than a case described in § 213a.2(a)(2). The obligations of section 213A of the Act do not bind a person

who executes such other USCIS affidavits of support. Persons sponsoring an Amerasian alien described in section 204(f)(2) of the Act remain subject to the provisions of section 204(f)(4)(B) of the Act and 8 CFR 204.4(i), as appropriate.

[76 FR 53790, Aug. 29, 2011]

PART 214—NONIMMIGRANT CLASSES

Sec.

- 214.1 Requirements for admission, extension, and maintenance of status.
- 214.2 Special requirements for admission, extension, and maintenance of status.
- 214.3 Approval of schools for enrollment of F and M nonimmigrants.
- 214.4 Denial of certification, denial of recertification or withdrawal of SEVP certification.
- 214.5 Libyan and third country nationals acting on behalf of Libyan entities.
- 214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level.
- 214.7 Habitual residence in the territories and possessions of the United States and consequences thereof.
- 214.8–214.10 [Reserved]
- 214.11 Alien victims of severe forms of trafficking in persons.
- 214.12 Preliminary enrollment of schools in the Student and Exchange Visitor Information System (SEVIS).
- 214.13 SEVIS for certain F, J, and M nonimmigrants.
- 214.14 Alien victims of certain qualifying criminal activity.
- 214.15 Certain spouses and children of lawful permanent residents.

AUTHORITY: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) *General*—(1) *Nonimmigrant classes.* For the purpose of administering the nonimmigrant provisions of the Act,

the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

(i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien's spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiancée(e), (K)(ii) for the spouse, and (K)(iii) for the children of either;

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien's spouse and children;

(vii) Section 101(a)(15)(Q)(ii) is divided to create a (Q)(iii) for subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(Q)(ii) of the Act;

(viii) Section 101(a)(15)(T)(ii) is divided into (T)(ii), (T)(iii) and (T)(iv) for the spouse, child, and parent, respectively, of a nonimmigrant classified under section 101(a)(15)(T)(i); and

(ix) Section 101(a)(15)(U)(ii) is divided into (U)(ii), (U)(iii), (U)(iv), and (U)(v) for the spouse, child, parent, and siblings, respectively, of a nonimmigrant classified under section 101(a)(15)(U)(i); and

(2) *Classification designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A-1.
101(a)(15)(A)(ii)	A-2.
101(a)(15)(A)(iii)	A-3.
101(a)(15)(B)(i)	B-1.

Section	Designation
101(a)(15)(B)(ii)	B-2.
101(a)(15)(C)(i)	C-1.
101(a)(15)(C)(ii)	C-2.
101(a)(15)(C)(iii)	C-3.
101(a)(15)(D)(i)	D-1.
101(a)(15)(D)(ii)	D-2.
101(a)(15)(E)(i)	E-1.
101(a)(15)(E)(ii)	E-2.
101(a)(15)(F)(i)	F-1.
101(a)(15)(F)(ii)	F-2.
101(a)(15)(G)(i)	G-1.
101(a)(15)(G)(ii)	G-2.
101(a)(15)(G)(iii)	G-3.
101(a)(15)(G)(iv)	G-4.
101(a)(15)(g)(v)	G-5.
101(a)(15)(H)(i)(B)	H-1B.
101(a)(15)(H)(i)(C)	H-1C.
101(a)(15)(H)(ii)(A)	H-2A.
101(a)(15)(H)(ii)(B)	H-2B.
101(a)(15)(H)(iii)	H-3.
101(a)(15)(H)(iv)	H-4.
101(a)(15)(I)	I.
101(a)(15)(J)(i)	J-1.
101(a)(15)(J)(ii)	J-2.
101(a)(15)(K)(i)	K-1.
101(a)(15)(K)(ii)	K-3.
101(a)(15)(K)(iii)	K-2; K-4.
101(a)(15)(L)(i)	L-1.
101(a)(15)(L)(ii)	L-2.
101(a)(15)(M)(i)	M-1.
101(a)(15)(M)(ii)	M-2.
101(a)(15)(N)(i)	N-8.
101(a)(15)(N)(ii)	N-9.
101(a)(15)(O)(i)	O-1.
101(a)(15)(O)(ii)	O-2.
101(a)(15)(O)(iii)	O-3.
101(a)(15)(P)(i)	P-1.
101(a)(15)(P)(ii)	P-2.
101(a)(15)(P)(iii)	P-3.
101(a)(15)(P)(iv)	P-4.
101(a)(15)(Q)(i)	Q-1.
101(a)(15)(Q)(ii)	Q-2.
101(a)(15)(Q)(iii)	Q-3.
101(a)(15)(R)(i)	R-1.
101(a)(15)(R)(ii)	R-2.
101(a)(15)(S)(i)	S-5.
101(a)(15)(S)(ii)	S-6.
101(a)(15)(S) qualified family members ..	S-7.
101(a)(15)(T)(i)	T-1.
101(a)(15)(T)(ii)	T-2.
101(a)(15)(T)(iii)	T-3.
101(a)(15)(T)(iv)	T-4.
101(a)(15)(U)(i)	U-1.
101(a)(15)(U)(ii)	U-2, U-3, U-4, U-5
101(a)(15)(V)	V-1, V-2, or V-3
NAFTA, Principal	TN.
NAFTA, Dependent	TD.
Visa Waiver, Business	WB.
Visa Waiver, Tourist	WT.

NOTE 1: The classification designation K-2 is for the child of a K-1. The classification designation K-4 is for the child of a K-3.

NOTE 2: The classification designation V-1 is for the spouse of a lawful permanent resident; the classification designation V-2 is for the principal beneficiary of an I-130 who is the child of an LPR; the classification V-3 is for the derivative child of a V-1 or V-2 alien.

(3) *General requirements.* (i) Every nonimmigrant alien who applies for admission to, or an extension of stay in,

Department of Homeland Security

§214.1

the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived. A nonimmigrant alien's admission to the United States is conditioned on compliance with any inspection requirement in §235.1(d) or of this chapter. The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission. An alien applying for extension of stay must present a passport only if requested to do so by the Department of Homeland Security. The passport of an alien applying for extension of stay must be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien must agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension.

(ii) At the time of admission or extension of stay, every nonimmigrant alien must also agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay, or upon abandonment of his or her authorized nonimmigrant status, and to comply with the departure procedures at section 215.8 of this chapter if such procedures apply to the particular alien. The nonimmigrant alien's failure to comply with those departure requirements, including any requirement that the alien provide biometric identifiers, may constitute a failure of the alien to maintain the terms of his or her nonimmigrant status.

(iii) At the time a nonimmigrant alien applies for admission or extension of stay, he or she must post a bond on Form I-352 in the sum of not less than \$500, to ensure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the Commissioner of CBP, the Director of U.S. Citizenship and Immigration Services, an immigra-

tion judge, or the Board of Immigration Appeals.

(b) *Readmission of nonimmigrants under section 101(a)(15) (F), (J), (M), or (Q)(ii) to complete unexpired periods of previous admission or extension of stay—*(1) *Section 101(a)(15)(F).* The inspecting immigration officer shall readmit for duration of status as defined in §214.2(f)(5)(iii), any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(F) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;
- (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94 (see §1.4), issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and either:
 - (A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or
 - (B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(2) *Section 101(a)(15)(J).* The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(J) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;

§214.1

8 CFR Ch. I (1–1–16 Edition)

(iii) Is in possession of a valid passport unless exempt from the requirement for the presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay or copy three of the last Form IAP-66 issued to the alien. Form I-94 or Form IAP-66 must show the unexpired period of the alien's stay endorsed by the Service.

(3) *Section 101(a)(15)(M)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(M) of the Act, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence not exceeding thirty days solely in contiguous territory;

(iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

(4) *Section 101(a)(15)(Q)(ii)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence from the United States not exceeding 30 days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport;

(iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay. The principal alien must also present a Certification Letter issued by the Department of State's Program Administrator.

(c) *Extensions of stay*—(1) *Filing on Form I-129*. An employer seeking the services of an E-1, E-2, H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, R-1, or TN nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I-129. The petition must be filed with the fee required in §103.7 of this chapter, and the initial evidence specified in §214.2, and on the petition form. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases dependents of the worker should file on Form I-539.

(2) *Filing on Form I-539*. Any other nonimmigrant alien, except an alien in F or J status who has been granted duration of status, who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay on Form I-539 with the fee required in §103.7 of this chapter together with any initial evidence specified in the applicable provisions of §214.2, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K-3/K-4 status must do so in accordance with §214.2(k)(10).

(3) *Ineligible for extension of stay*. A nonimmigrant in any of the following classes is ineligible for an extension of stay:

(i) B-1 or B-2 where admission was pursuant to the Visa Waiver Pilot Program;

(ii) C-1, C-2, C-3;

(iii) D-1, D-2;

(iv) K-1, K-2;

(v) Any nonimmigrant admitted for duration of status, other than as provided in §214.2(f)(7);

(vi) Any nonimmigrant who is classified pursuant to section 101(a)(15)(S) of the Act beyond a total of 3 years; or

(vii) Any nonimmigrant who is classified according to section 101(a)(15)(Q)(ii) of the Act beyond a total of 3 years.

(viii) Any nonimmigrant admitted pursuant to the Guam-CNMI Visa Waiver Program, as provided in section 212(l) of the Act.

(4) *Timely filing and maintenance of status.* An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

(5) *Decision in Form I-129 or I-539 extension proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or, pursuant to notification in the FEDERAL REGISTER, on the basis of national security, diplomatic, or public safety reasons.

(e) *Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(f) *Registration and false information.* A nonimmigrant's admission and continued stay in the United States is conditioned on compliance with any registration, photographing, and fingerprinting requirements under §264.1(f) of this chapter that relate to the maintenance of nonimmigrant status and also on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to register or to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

(g) *Criminal activity.* A condition of a nonimmigrant's admission and continued stay in the United States is obedience to all laws of United States jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(1)(C)(i) of the Act.

(h) *Education privacy and F, J, and M nonimmigrants.* As authorized by section 641(c)(2) of Division C of Pub. L. 104–208, 8 U.S.C. 1372, and §2.1(a) of this chapter, the Service has determined that, with respect to F and M nonimmigrant students and J nonimmigrant exchange visitors, waiving the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, is necessary for the proper implementation of 8 U.S.C. 1372. An educational agency or institution may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the educational agency or institution is required to report under 8 U.S.C. 1372 and §214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) on the basis of FERPA and any regulation implementing FERPA. The waiver of FERPA under this paragraph authorizes and requires an educational agency or institution to report information concerning an F, J or M nonimmigrant that would ordinarily be protected by FERPA, but only to the extent that 8 U.S.C. 1372 and §214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

(i) *Employment in a health care occupation.* (1) Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a health care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(2) A TN nonimmigrant may establish that he or she is eligible for a waiver described at 8 CFR 212.15(n) by providing evidence that his or her initial admission as a TN (or TC) nonimmigrant health care worker occurred before September 23, 2003, and he or she was licensed and employed in the

United States as a health care worker before September 23, 2003. Evidence may include, but is not limited to, copies of TN or TC approval notices, copies of Form I-94 Arrival/Departure Records, employment verification letters and/or pay-stubs or other employment records, and state health care worker licenses.

(j) *Extension of stay or change of status for health care worker.* In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), the petitioning employer may file a Form I-129 to extend the approval period for the alien's classification for the nonimmigrant status. If the alien is in the United States and is eligible for an extension of stay or change of status, the Form I-129 also serves as an application to extend the period of the alien's authorized stay or to change the alien's status. Although the Form I-129 petition may be approved, as it relates to the employer's request to classify the alien, the application for an extension of stay or change of status shall be denied if:

(1) The petitioner or applicant fails to submit the certification required by 8 CFR 212.15(a) with the petition or application to extend the alien's stay or change the alien's status; or

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While DHS may admit, extend the period of authorized stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004 (or on or before July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has

Department of Homeland Security

§214.2

not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

(k) *Denial of petitions under section 214(c) of the Act based on a finding by the Department of Labor.* Upon debarment by the Department of Labor pursuant to 20 CFR part 655, USCIS may deny any petition filed by that petitioner for nonimmigrant status under section 101(a)(15)(H) (except for status under sections 101(a)(15)(H)(i)(b1)), (L), (O), and (P)(i) of the Act for a period of at least 1 year but not more than 5 years. The length of the period shall be based on the severity of the violation or violations. The decision to deny petitions, the time period for the bar to petitions, and the reasons for the time period will be explained in a written notice to the petitioner.

[26 FR 12067, Dec. 16, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §214.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§214.2 Special requirements for admission, extension, and maintenance of status.

The general requirements in §214.1 are modified for the following nonimmigrant classes:

(a) *Foreign government officials*—(1) *General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(A) of the Act. An alien who has a nonimmigrant status under section 101(a)(15)(A)(i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section 101(a)(15)(A)(iii) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he/she intends to continue to

employ the applicant and describing the type of work the applicant will perform.

(2) *Definition of A-1 or A-2 dependent.* For purposes of employment in the United States, the term *dependent* of an A-1 or A-2 principal alien, as used in §214.2(a), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer or employee assigned to a diplomatic or consular office in the United States:

- (i) Spouse;
- (ii) Unmarried children under the age of 21;
- (iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;
- (iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements;
- (v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability; or

(vi) An immediate family member of an A-1 or A-2 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with A-1 or A-2 nonimmigrant status, who falls within a category of aliens recognized by the Department of State as qualifying dependents.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for A-1 or A-2 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien

and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him/her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *Dependent employment pursuant to formal bilateral employment agreements and informal de facto reciprocal arrangements.* (i) The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of an A-1 or A-2 principal alien assigned to official duty in the United States may accept or continue in unrestricted employment based on such formal bilateral agreements upon favorable recommendation by the Department of State and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (a)(6) of this section.

(ii) For purposes of this section, an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of an A-1 or A-2 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment based upon informal de facto arrange-

ments upon favorable recommendation by the Department of State and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the procedures set forth in paragraph (a)(6) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent desiring employment are maintaining A-1 or A-2 status as appropriate;

(B) The principal's assignment in the United States is expected to last more than six months;

(C) Employment of a similar nature for dependents of United States Government officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign state's government;

(D) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of A-1 or A-2 dependents: who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; and/or who cannot establish that they have paid taxes and social security on income from current or previous United States employment.

(6) *Application procedures.* The following procedures are applicable to dependent employment applications under bilateral agreements and de facto arrangements:

(i) The dependent must submit a completed Form I-566 to the Department of State through the office, mission, or organization which employs his/her principal alien. A dependent applying under paragraph (a)(2)(iii) or (iv) of this section must submit a certified statement from the post-secondary educational institution confirming that he/she is pursuing studies on a full-time basis. A dependent applying under paragraph (a)(2)(v) of this section must submit medical certification regarding his/her condition. The certification should identify the dependent and the certifying physician and give the physician's phone number; identify the condition, describe the symptoms and provide a prognosis; and certify that the dependent is unable to maintain a home of his or her own. Additionally, a dependent applying under the terms of a de facto arrangement must attach a statement from the prospective employer which includes the dependent's name; a description of the position offered and the duties to be performed; the salary offered; and verification that the dependent possesses the qualifications for the position.

(ii) The Department of State reviews and verifies the information provided, makes its determination, and endorses the Form I-566.

(iii) If the Department of State's endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I-566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Secretary.

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than three years each.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified A-3.* A dependent or family member of a principal alien classified A-3 may not be em-

ployed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section 101(a)(15)(A) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(1)(C)(i) of the Act. An alien who is classified under section 101(a)(15)(A) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(1)(C)(i) of the Act.

(b) *Visitors*—(1) *General.* Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at §212.1(e) of this chapter may be admitted to and stay on Guam for period not to exceed fifteen days and are not eligible for extensions of stay.

(2) *Minimum six month admissions.* Any B-2 visitor who is found otherwise admissible and is issued a Form I-94 (see §1.4), will be admitted for a minimum period of six months, regardless of whether less time is requested, provided, that any required passport is valid as specified in section 212(a)(26) of the Act. Exceptions to the minimum six month admission may be made only in individual cases upon the specific approval of the district director for good cause.

(3) *Visa Waiver Pilot Program.* Special requirements for admission and maintenance of status for visitors admitted to the United States under the Visa Waiver Pilot Program are set forth in section 217 of the Act and part 217 of this chapter.

(4) *Admission of aliens pursuant to the North American Free Trade Agreement*

(NAFTA). A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid, unexpired entry documents such as a passport and visa, or a passport and BCC in the case of Mexican applicants, a description of the purpose for which the alien is seeking admission, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the Canada/U.S. Free Trade Agreement and, with respect to Mexico, are those requirements which were in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

(i) *Occupations and professions set forth in Appendix 1603.A.1 to Annex 1603 of the NAFTA—(A) Research and design.* Technical scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) *Growth, manufacture and production* (1) Harvester owner supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: Grain, fiber, fruit and vegetables.)

(2) Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

(C) *Marketing.* (1) Market researchers and analyst conducting independent research or analysis, or research or analysis for an enterprise located in the territory of another Party.

(2) Trade fair and promotional personnel attending a trade convention.

(D) *Sales.* (1) Sales representatives and agents taking orders or negotiating contracts for goods or services

for an enterprise located in the territory of another Party but not delivering goods or providing services.

(2) Buyers purchasing for an enterprise located in the territory of another Party.

(E) *Distribution.* (1) Transportation operators transporting goods or passengers to the United States from the territory of another Party or loading and transporting goods or passengers from the United States to the territory of another Party, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with the United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) *General service.* (1) Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1 to Annex 1603 of the NAFTA, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary

Department of Homeland Security

§214.2

stay) and otherwise satisfying the requirements of Section A to Annex 1063 of the NAFTA.

(2) Management and supervisory personnel engaging in commercial transactions for an enterprise located in the territory of another Party.

(3) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

(4) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(5) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance.)

(6) Tour bus operators entering the United States:

(i) With a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party.

(ii) To meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party.

(iii) With a group of passengers on a bus tour to be unloaded in the United States and returning with no passengers or reloading with the group for transportation to the territory of another Party.

(7) Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(ii) Occupations and professions not listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA. Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA from temporary entry under section 101(a)(15)(B) of the Act, if such

person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

(5) *Construction workers not admissible.* Aliens seeking to enter the country to perform building or construction work, whether on-site or in-plant, are not eligible for classification or admission as B-1 nonimmigrants under section 101(a)(15)(B) of the Act. However, alien nonimmigrants otherwise qualified as B-1 nonimmigrants may be issued visas and may enter for the purpose of supervision or training of others engaged in building or construction work, but not for the purpose of actually performing any such building or construction work themselves.

(6) [Reserved]

(7) *Enrollment in a course of study prohibited.* An alien who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study. Such an alien who desires to enroll in a course of study must either obtain an F-1 or M-1 nonimmigrant visa from a consular officer abroad and seek readmission to the United States, or apply for and obtain a change of status under section 248 of the Act and 8 CFR part 248. The alien may not enroll in the course of study until the Service has admitted the alien as an F-1 or M-1 nonimmigrant or has approved the alien's application under part 248 of this chapter and changed the alien's status to that of an F-1 or M-1 nonimmigrant.

(c) *Transits.* (1) [Reserved]

(2) *United Nations Headquarters District.* An alien of the class defined in section 101(a)(15)(C) of the Act, whose visa is limited to transit to and from the United Nations Headquarters District, if otherwise admissible, shall be admitted on the additional conditions that he proceed directly to the immediate vicinity of the United Nations Headquarters District, and remain there continuously, departing therefrom only if required in connection with his departure from the United States, and that he have a document establishing his ability to enter some

country other than the United States following his sojourn in the United Nations Headquarters District. The immediate vicinity of the United Nations Headquarters District is that area lying within a twenty-five mile radius of Columbus Circle, New York, NY.

(3) *Others.* The period of admission of an alien admitted under section 101(a)(15)(C) of the Act shall not exceed 29 days.

(d) *Crewmen.* (1) The provisions of parts 251, 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft. However, nonimmigrant crewmen may perform crewmember duties through stopovers on an international flight for any United States carrier where such flight uses a single aircraft and has an origination or destination point outside the United States.

(2) *Denial of crewman status in the case of certain labor disputes (D non-immigrants).* (i) An alien shall be denied D crewman status as described in section 101(a)(15)(D) of the Act if:

(A) The alien intends to land for the purpose of performing service on a vessel of the United States (as defined in 46 U.S.C. 2101(46)) or an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958); and

(B) A labor dispute consisting of a strike or lockout exists in the bargaining unit of the employer in which the alien intends to perform such service; and

(C) The alien is not already an employee of the company (as described in paragraph (d)(2)(iv) of this section).

(ii) *Refusal to land.* Any alien (except a qualified current employee as described in paragraph (d)(2)(iv) of this section) who the examining immigration officer determines has arrived in the United States for the purpose of performing service on board a vessel or an aircraft of the United States when a strike or lockout is under way in the

bargaining unit of the employer, shall be refused a conditional landing permit under section 252 of the Act.

(iii) *Ineligibility for parole.* An alien described in paragraph (d)(2)(i) of this section may not be paroled into the United States under section 212(d)(5) of the Act for the purpose of performing crewmember duties unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States. This paragraph does not prohibit the granting of parole for other purposes, such as medical emergencies.

(iv) *Qualified current employees.* (A) Paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section do not apply to an alien who is already an employee of the owner or operator of the vessel or air carrier and who at the time of inspection presents true copies of employer work records which satisfy the examining immigration officer that the alien:

(1) Has been an employee of such employer for a period of not less than one year preceding the date that a strike or lawful lockout commenced;

(2) Has served as a qualified crewman for such employer at least once in three different months during the 12-month period preceding the date that the strike or lockout commenced; and

(3) Shall continue to provide the same crewman services that he or she previously provided to the employer.

(B) An alien crewman who qualifies as a current employee under this paragraph remains subject to the restrictions on his or her employment in the United States contained in paragraph (d)(1) of this section.

(v) *Strike or lockout determination.* These provisions will take effect if the Attorney General, through the Commissioner of the Immigration and Naturalization Service or his or her designee, after consultation with the National Mediation Board, determines that a strike, lockout, or labor dispute involving a work stoppage is in progress in the bargaining unit of the employer for whom the alien intends to perform such service.

(e) *Treaty traders and investors*—(1) *Treaty trader.* An alien, if otherwise admissible, may be classified as a non-immigrant treaty trader (E-1) under

Department of Homeland Security

§214.2

the provisions of section 101(a)(15)(E)(i) of the Act if the alien:

(i) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an employee of a foreign person or organization engaged in trade principally between the United States and the treaty country of which the alien is a national, taking into consideration any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(ii) Intends to depart the United States upon the expiration or termination of treaty trader (E-1) status.

(2) *Treaty investor*. An alien, if otherwise admissible, may be classified as a nonimmigrant treaty investor (E-2) under the provision of section 101(a)(15)(E)(ii) of the Act if the alien:

(i) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living;

(ii) Is seeking entry solely to develop and direct the enterprise; and

(iii) Intends to depart the United States upon the expiration or termination of treaty investor (E-2) status.

(3) *Employee of treaty trader or treaty investor*. An alien employee of a treaty trader, if otherwise admissible, may be classified as E-1, and an alien employee of a treaty investor, if otherwise admissible, may be classified as E-2 if the employee is in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the alien's services essential to the efficient operation of the enterprise. The employee must have the same nationality as the principal alien employer. In addition, the employee must intend to depart the United States upon the expiration or termination of E-1 or E-2 status. The principal alien employer must be:

(i) A person in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status

or, if not in the United States, would be classifiable as a treaty trader or treaty investor; or

(ii) An enterprise or organization at least 50 percent owned by persons in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status or who, if not in the United States, would be classifiable as treaty traders or treaty investors.

(4) *Spouse and children of treaty trader or treaty investor*. The spouse and child of a treaty trader or treaty investor accompanying or following to join the principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of a treaty trader or treaty investor is not material to the classification of the spouse or child under the provisions of section 101(a)(15)(E) of the Act.

(5) *Nonimmigrant intent*. An alien classified under section 101(a)(15)(E) of the Act shall maintain an intention to depart the United States upon the expiration or termination of E-1 or E-2 status. However, an application for initial admission, change of status, or extension of stay in E classification may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

(6) *Treaty country*. A treaty country is, for purposes of this section, a foreign state with which a qualifying Treaty of Friendship, Commerce, or Navigation or its equivalent exists with the United States. A treaty country includes a foreign state that is accorded treaty visa privileges under section 101(a)(15)(E) of the Act by specific legislation.

(7) *Treaty country nationality*. The nationality of an individual treaty trader or treaty investor is determined by the authorities of the foreign state of which the alien is a national. In the case of an enterprise or organization, ownership must be traced as best as is practicable to the individuals who are ultimately its owners.

(8) *Terms and conditions of E treaty status*—(i) *Limitations on employment*. The Service determines the terms and conditions of E treaty status at the

time of admission or approval of a request to change nonimmigrant status to E classification. A treaty trader, treaty investor, or treaty employee may engage only in employment which is consistent with the terms and conditions of his or her status and the activity forming the basis for the E treaty status.

(ii) *Subsidiary employment.* Treaty employees may perform work for the parent treaty organization or enterprise, or any subsidiary of the parent organization or enterprise. Performing work for subsidiaries of a common parent enterprise or organization will not be deemed to constitute a substantive change in the terms and conditions of the underlying E treaty employment if, at the time the E treaty status was determined, the applicant presented evidence establishing:

(A) The enterprise or organization, and any subsidiaries thereof, where the work will be performed; the requisite parent-subsidiary relationship; and that the subsidiary independently qualifies as a treaty organization or enterprise under this paragraph;

(B) In the case of an employee of a treaty trader or treaty investor, the work to be performed requires executive, supervisory, or essential skills; and

(C) The work is consistent with the terms and conditions of the activity forming the basis of the classification.

(iii) *Substantive changes.* Prior Service approval must be obtained where there will be a substantive change in the terms or conditions of E status. In such cases, a treaty alien must file a new application on Form I-129 and E supplement, in accordance with the instructions on that form, requesting extension of stay in the United States. In support of an alien's Form I-129 application, the treaty alien must submit evidence of continued eligibility for E classification in the new capacity. Alternatively, the alien must obtain from a consular officer a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. The Service will deem there to have been a substantive change necessitating the filing of a new Form I-129 application in cases where there has been a fundamental change in the em-

ploying entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) *Non-substantive changes.* Prior approval is not required, and there is no need to file a new Form I-129, if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment which would affect the alien's eligibility for E classification. Further, prior approval is not required if corporate changes occur which do not affect the previously approved employment relationship, or are otherwise non-substantive. To facilitate admission, the alien may:

(A) Present a letter from the treaty-qualifying company through which the alien attained E classification explaining the nature of the change;

(B) Request a new Form I-797, Approval Notice, reflecting the non-substantive change by filing Form I-129, with fee, and a complete description of the change, or;

(C) Apply directly to Department of State for a new E visa reflecting the change. An alien who does not elect one of the three options contained in paragraph (e)(8)(iv) (A) through (C) of this section, is not precluded from demonstrating to the satisfaction of the immigration officer at the port-of-entry in some other manner, his or her admissibility under section 101(a)(15)(E) of the Act.

(v) *Advice.* To ascertain whether a change is substantive, an alien may file Form I-129, with fee, and a complete description of the change, to request appropriate advice. In cases involving multiple employees, an alien may request that USCIS determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single Form I-129, with fee, and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes.

(vi) *Approval.* If an application to change the terms and conditions of E status or employment is approved, the Service shall notify the applicant on Form I-797. An extension of stay in nonimmigrant E classification may be granted for the validity of the approved application. The alien is not authorized

to begin the new employment until the application is approved. Employment is authorized only for the period of time the alien remains in the United States. If the alien subsequently departs from the United States, readmission in E classification may be authorized where the alien presents his or her unexpired E visa together with the Form I-797, Approval Notice, indicating Service approval of a change of employer or of a change in the substantive terms or conditions of treaty status or employment in E classification, or, in accordance with 22 CFR 41.112(d), where the alien is applying for readmission after an absence not exceeding 30 days solely in contiguous territory.

(vii) An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. In all cases where the treaty employee will be providing services to a subsidiary under this paragraph, the subsidiary is required to comply with the terms of 8 CFR part 274a.

(9) *Trade—definitions.* For purposes of this paragraph: *Items of trade* include but are not limited to goods, services, international banking, insurance, monies, transportation, communications, data processing, advertising, accounting, design and engineering, management consulting, tourism, technology and its transfer, and some news-gathering activities. For purposes of this paragraph, goods are tangible commodities or merchandise having extrinsic value. Further, as used in this paragraph, services are legitimate economic activities which provide other than tangible goods.

Trade is the existing international exchange of items of trade for consideration between the United States and the treaty country. Existing trade includes successfully negotiated contracts binding upon the parties which call for the immediate exchange of items of trade. Domestic trade or the development of domestic markets without international exchange does not constitute trade for purposes of section 101(a)(15)(E) of the Act. This exchange must be traceable and identifi-

able. Title to the trade item must pass from one treaty party to the other.

(10) *Substantial trade.* Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. This continuous flow contemplates numerous transactions over time. Treaty trader status may not be established or maintained on the basis of a single transaction, regardless of how protracted or monetarily valuable the transaction. Although the monetary value of the trade item being exchanged is a relevant consideration, greater weight will be given to more numerous exchanges of larger value. There is no minimum requirement with respect to the monetary value or volume of each individual transaction. In the case of smaller businesses, an income derived from the value of numerous transactions which is sufficient to support the treaty trader and his or her family constitutes a favorable factor in assessing the existence of substantial trade.

(11) *Principal trade.* Principal trade between the United States and the treaty country exists when over 50 percent of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality.

(12) *Investment.* An investment is the treaty investor's placing of capital, including funds and other assets (which have not been obtained, directly or indirectly, through criminal activity), at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. The alien has the burden of establishing such irrevocable commitment. The alien may use any legal mechanism available, such as the placement of invested funds in escrow

pending admission in, or approval of, E classification, that would not only irrevocably commit funds to the enterprise, but might also extend personal liability protection to the treaty investor in the event the application for E classification is denied.

(13) *Bona fide enterprise.* The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit. The enterprise must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

(14) *Substantial amount of capital.* A substantial amount of capital constitutes an amount which is:

(i) Substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;

(ii) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and

(iii) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Generally, the lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered a substantial amount of capital.

(15) *Marginal enterprise.* For purposes of this section, an enterprise may not be marginal. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income, but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future income-generating capacity should generally be realizable within 5 years from the date the alien commences the normal business activity of the enterprise.

(16) *Solely to develop and direct.* An alien seeking classification as a treaty investor (or, in the case of an employee of a treaty investor, the owner of the treaty enterprise) must demonstrate that he or she does or will develop and direct the investment enterprise. Such

an applicant must establish that he or she controls the enterprise by demonstrating ownership of at least 50 percent of the enterprise, by possessing operational control through a managerial position or other corporate device, or by other means.

(17) *Executive and supervisory character.* The applicant's position must be principally and primarily, as opposed to incidentally or collaterally, executive or supervisory in nature. Executive and supervisory duties are those which provide the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof. In determining whether the applicant has established possession of the requisite control and responsibility, a Service officer shall consider, where applicable:

(i) That an executive position is one which provides the employee with great authority to determine the policy of, and the direction for, the enterprise;

(ii) That a position primarily of supervisory character provides the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees, and;

(iii) Whether the applicant possesses executive and supervisory skills and experience; a salary and position title commensurate with executive or supervisory employment; recognition or indicia of the position as one of authority and responsibility in the overall organizational structure; responsibility for making discretionary decisions, setting policies, directing and managing business operations, supervising other professional and supervisory personnel; and that, if the position requires some routine work usually performed by a staff employee, such functions may only be of an incidental nature.

(18) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the treaty enterprise. In determining whether the skills possessed by the alien are essential to the operation of the employing

treaty enterprise, a Service officer must consider, where applicable:

(i) The degree of proven expertise of the alien in the area of operations involved; whether others possess the applicant's specific skill or aptitude; the length of the applicant's experience and/or training with the treaty enterprise; the period of training or other experience necessary to perform effectively the projected duties; the relationship of the skill or knowledge to the enterprise's specific processes or applications, and the salary the special qualifications can command; that knowledge of a foreign language and culture does not, by itself, meet the special qualifications requirement, and;

(ii) Whether the skills and qualifications are readily available in the United States. In all cases, in determining whether the applicant possesses special qualifications which are essential to the treaty enterprise, a Service officer must take into account all the particular facts presented. A skill that is essential at one point in time may become commonplace at a later date. Skills that are needed to start up an enterprise may no longer be essential after initial operations are complete and running smoothly. Some skills are essential only in the short-term for the training of locally hired employees. Under certain circumstances, an applicant may be able to establish his or her essentiality to the treaty enterprise for a longer period of time, such as, in connection with activities in the areas of product improvement, quality control, or the provision of a service not yet generally available in the United States. Where the treaty enterprise's need for the applicant's special qualifications, and therefore, the applicant's essentiality, is time-limited, Service officers may request that the applicant provide evidence of the period for which skills will be needed and a reasonable projected date for completion of start-up or replacement of the essential skilled workers.

(19) *Period of admission.* Periods of admission are as follows:

(i) A treaty trader or treaty investor may be admitted for an initial period of not more than 2 years.

(ii) The spouse and minor children accompanying or following to join a treaty trader or treaty investor shall be admitted for the period during which the principal alien is in valid treaty trader or investor status. The temporary departure from the United States of the principal trader or investor shall not affect the derivative status of the dependent spouse and minor unmarried children, provided the familial relationship continues to exist and the principal remains eligible for admission as an E nonimmigrant to perform the activity.

(iii) Unless otherwise provided for in this chapter, an alien shall not be admitted in E classification for a period of time extending more than 6 months beyond the expiration date of the alien's passport.

(20) *Extensions of stay.* Requests for extensions of stay may be granted in increments of not more than 2 years. A treaty trader or treaty investor in valid E status may apply for an extension of stay by filing an application for extension of stay on Form I-129 and E Supplement, with required accompanying documents, in accordance with §214.1 and the instructions on that form.

(i) For purposes of eligibility for an extension of stay, the alien must prove that he or she:

(A) Has at all times maintained the terms and conditions of his or her E nonimmigrant classification;

(B) Was physically present in the United States at the time of filing the application for extension of stay; and

(C) Has not abandoned his or her extension request.

(ii) With limited exceptions, it is presumed that employees of treaty enterprises with special qualifications who are responsible for start-up operations should be able to complete their objectives within 2 years. Absent special circumstances, therefore, such employees will not be eligible to obtain an extension of stay.

(iii) Subject to paragraph (e)(5) of this section and the presumption noted in paragraph (e)(22)(ii) of this section, there is no specified number of extensions of stay that a treaty trader or treaty investor may be granted.

(21) *Change of nonimmigrant status.* (i) An alien in another valid nonimmigrant status may apply for change of status to E classification by filing an application for change of status on Form I-129 and E Supplement, with required accompanying documents establishing eligibility for a change of status and E classification, in accordance with 8 CFR part 248 and the instructions on Form I-129 and E Supplement.

(ii) The spouse or minor children of an applicant seeking a change of status to that of treaty trader or treaty investor alien shall file concurrent applications for change of status to derivative treaty classification on the appropriate Service form. Applications for derivative treaty status shall:

(A) Be approved only if the principal treaty alien is granted treaty status and continues to maintain that status;

(B) Be approved for the period of admission authorized in paragraph (e)(20) of this section.

(22) *Denial of treaty trader or treaty investor status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) A citizen of Canada or Mexico may be denied E treaty trader or treaty investor status as described in section 101(a)(15)(E) of the Act and section B of Annex 1603 of the NAFTA if:

(A) The Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers in the alien's occupational classification is in progress at the place where the alien is or intends to be employed; and

(B) Temporary entry of that alien may affect adversely either:

(I) The settlement of any labor dispute that is in progress at the place or intended place of employment, or

(2) The employment of any person who is involved in such dispute.

(ii) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, or whether the Service has been otherwise informed that such a strike

or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other E nonimmigrants; and

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers.

(iii) Although participation by an E nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(iv) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (e)(22)(i) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny entry to an applicant for E status.

(23) *Special procedures for classifying foreign investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E-2 nonimmigrant treaty investors under title VII of the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229), 48 U.S.C. 1806.*

(i) *E-2 CNMI Investor eligibility.* During the period ending on January 18, 2013, an alien may, upon application to the Secretary of Homeland Security, be classified as a CNMI-only nonimmigrant treaty investor (E-2 CNMI Investor) under section 101(a)(15)(E)(ii) of the Act if the alien:

(A) Was lawfully admitted to the CNMI in long-term investor status under the immigration laws of the CNMI before the transition program effective date and had that status on the transition program effective date;

Department of Homeland Security

§214.2

(B) Has continuously maintained residence in the CNMI;

(C) Is otherwise admissible to the United States; and

(D) Maintains the investment or investments that formed the basis for such long-term investment status.

(ii) *Definitions.* For purposes of paragraph (e)(23) of this section, the following definitions apply:

(A) *Approved investment or residence* means an investment or residence approved by the CNMI government.

(B) *Approval letter* means a letter issued by the CNMI government certifying the acceptance of an approved investment subject to the minimum investment criteria and standards provided in 4 N. Mar. I. Code section 5941 *et seq.* (long-term business certificate), 4 N. Mar. I. Code section 5951 *et seq.* (foreign investor certificate), and 4 N. Mar. I. Code section 50101 *et seq.* (foreign retiree investment certificate).

(C) *Certificate* means a certificate or certification issued by the CNMI government to an applicant whose application has been approved by the CNMI government.

(D) *Continuously maintained residence in the CNMI* means that the alien has maintained his or her residence within the CNMI since being lawfully admitted as a long-term investor and has been physically present therein for periods totaling at least half of that time. Absence from the CNMI for any continuous period of more than six months but less than one year after such lawful admission shall break the continuity of such residence, unless the subject alien establishes to the satisfaction of DHS that he or she did not in fact abandon residence in the CNMI during such period. Absence from the CNMI for any period of one year or more during the period for which continuous residence is required shall break the continuity of such residence.

(E) *Public organization* means a CNMI public corporation or an agency of the CNMI government.

(F) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2014.

(iii) *Long-term investor status.* Long-term investor status under the immigration laws of the CNMI includes only

the following investor classifications under CNMI immigration laws as in effect on or before November 27, 2009:

(A) *Long-term business investor.* An alien who has an approved investment of at least \$50,000 in the CNMI, as evidenced by a Long-Term Business Certificate.

(B) *Foreign investor.* An alien in the CNMI who has invested either a minimum of \$100,000 in an aggregate approved investment in excess of \$2,000,000, or a minimum of \$250,000 in a single approved investment, as evidenced by a Foreign Investment Certificate.

(C) *Retiree investor.* An alien in the CNMI who:

(1) Is over the age of 55 years and has invested a minimum of \$100,000 in an approved residence on Saipan or \$75,000 in an approved residence on Tinian or Rota, as evidenced by a Foreign Retiree Investment Certification; or

(2) Is over the age of 55 years and has invested a minimum of \$150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.

(iv) *Maintaining investments.* An alien in long-term investor status under the immigration laws of the CNMI is maintaining his or her investments if that alien investor is in compliance with the terms upon which the investor certificate was issued.

(v) *Filing procedures.* An alien seeking classification under E-2 CNMI Investor nonimmigrant status must file an application for E-2 CNMI investor nonimmigrant status, along with accompanying evidence, with USCIS in accordance with the form instructions before January 18, 2013. An application filed after the filing date deadline will be rejected.

(vi) *Appropriate documents.* Documentary evidence establishing eligibility for E-2 CNMI nonimmigrant investor status is required.

(A) Required evidence of admission includes a valid unexpired foreign passport and a properly endorsed CNMI admission document (*e.g.*, entry permit or certificate) reflecting lawful admission to the CNMI in long-term business investor, foreign investor, or retiree foreign investor status.

(B) Required evidence of long-term investor status includes:

(1) An unexpired Long-Term Business Certificate, in the case of an alien in long-term business investor status.

(2) An unexpired Foreign Investment Certificate, in the case of an alien in foreign investor status.

(3) A Foreign Retiree Investment Certification or a Foreign Retiree Investment Certificate, in the case of an alien in retiree investor status.

(C) Required evidence that the long-term investor is maintaining his or her investment includes all of the following, as applicable:

(1) An approval letter issued by the CNMI government.

(2) Evidence that capital has been invested, including bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, or any other agreements supporting the application.

(3) Evidence that the applicant has invested at least the minimum amount required, including evidence of assets which have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the applicant.

(4) A comprehensive business plan for new enterprises.

(5) Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations, or certifications of paid-in capital.

(6) Current business licenses.

(7) Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital.

(8) A listing of all resident and non-resident employees.

(9) A listing of all holders of business certificates for the business establishment.

(10) A listing of all corporations in which the applicant has a controlling interest.

(11) In the case of a holder of a certificate of foreign investment, copies of annual reports of investment activities in the CNMI containing sufficient information to determine whether the certificate holder is under continuing compliance with the standards of issuance, accompanied by annual financial audit reports performed by an independent certified public accountant.

(12) In the case of an applicant who is a retiree investor, evidence that he or she has an interest in property in the CNMI (*e.g.*, lease agreement), evidence of the value of the property interest (*e.g.*, an appraisal regarding the value of the property), and, as applicable, evidence of the value of the improvements on the property (*e.g.*, receipts or invoices of the costs of construction, the amount paid for a preexisting structure, or an appraisal of improvements).

(vii) *Physical presence in the CNMI.* Physical presence in the CNMI at the time of filing or during the pendency of the application is not required, but an application may not be filed by, or E-2 CNMI Investor status granted to, any alien present in U.S. territory other than in the CNMI. If an alien with CNMI long-term investor status departs the CNMI on or after the transition program effective date but before being granted E-2 CNMI Investor status, he or she may not be re-admitted to the CNMI without a visa or appropriate inadmissibility waiver under the U.S. immigration laws. If USCIS grants E-2 CNMI Investor nonimmigrant classification to an alien who is not physically present in the CNMI at the time of the grant, such alien must obtain an E-2 CNMI Investor nonimmigrant visa at a consular office abroad in order to seek admission to the CNMI in E-2 CNMI Investor status.

(viii) *Information for background checks.* USCIS may require an applicant for E-2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometric information. An applicant present in the CNMI

must pay or obtain a waiver of the biometric services fee described in 8 CFR 103.7(b) for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks.

(ix) *Denial.* A grant of E-2 CNMI Investor status is a discretionary determination, and the application may be denied for failure of the applicant to demonstrate eligibility or for other good cause. Denial of the application may be appealed to the USCIS Administrative Appeals Office or any successor body.

(x) *Spouse and children of an E-2 CNMI Investor—(A) Classification.* The spouse and children of an E-2 CNMI Investor accompanying or following-to-join the principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of an E-2 CNMI investor is not material to the classification of the spouse or child.

(B) *Employment authorization.* The spouse of an E-2 CNMI Investor lawfully admitted in the CNMI in E-2 CNMI Investor nonimmigrant status, other than the spouse of an E-2 CNMI investor who obtained such status based upon a Foreign Retiree Investment Certificate, is eligible to apply for employment authorization under 8 CFR 274a.12(c)(12) while in E-2 CNMI Investor nonimmigrant status. Employment authorization acquired under this paragraph is limited to employment in the CNMI only.

(xi) *Terms and conditions of E-2 CNMI Investor nonimmigrant status—(A) Non-immigrant status.* E-2 CNMI Investor nonimmigrant status and any derivative status are only applicable in the CNMI. Entry, employment, and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver eligibility. An E-2 CNMI Investor who enters, attempts to enter or attempts to travel to any other part of the United States without the appropriate visa or visa waiver eligibility, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated the terms and conditions of his or her E-2

CNMI Investor status. An E-2 CNMI Investor who departs the CNMI will require an E-2 CNMI investor visa for readmission to the CNMI as an E-2 CNMI Investor.

(B) *Employment authorization.* An alien with E-2 CNMI Investor nonimmigrant status is only employment authorized in the CNMI for the enterprise that is the basis for his or her CNMI Foreign Investment Certificate or Long-Term Business Certificate, to the extent that such Certificate authorized such activity. An alien with E-2 CNMI Investor nonimmigrant status based upon a Foreign Retiree Investor Certificate is not employment authorized.

(C) *Changes in E-2 CNMI investor non-immigrant status.* If there are any substantive changes to an alien's compliance with the terms and conditions of qualification for E-2 CNMI Investor nonimmigrant status, the alien must file a new application for E-2 CNMI Investor nonimmigrant status, in accordance with the appropriate form instructions to request an extension of stay in the United States. Prior approval is not required if corporate changes occur that do not affect a previously approved employment relationship, or are otherwise non-substantive.

(D) *Unauthorized change of employment.* An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act.

(E) *Periods of admission.* (1) An E-2 CNMI Investor may be admitted for an initial period of not more than two years.

(2) The spouse and children accompanying or following-to-join an E-2 CNMI Investor may be admitted for the period during which the principal alien is in valid E-2 CNMI Investor nonimmigrant status. The temporary departure from the United States of the principal E-2 CNMI Investor shall not affect the derivative status of the dependent spouse and children, provided the familial relationship continues to exist and the principal alien remains eligible for admission as an E-2 CNMI Investor.

(xii) *Extensions of stay.* Requests for extensions of E-2 CNMI Investor nonimmigrant status may be granted in increments of not more than two years, until the end of the transition period. To request an extension of stay, an E-2 CNMI Investor must file with USCIS an application for extension of stay, with required accompanying documents, in accordance with the appropriate form instructions. To qualify for an extension of E-2 CNMI Investor nonimmigrant status, each alien must demonstrate:

(A) Continuous maintenance of the terms and conditions of E-2 CNMI Investor nonimmigrant status;

(B) Physical presence in the CNMI at the time of filing the application for extension of stay; and

(C) That he or she did not leave during the pendency of the application.

(xiii) *Change of status.* An alien lawfully admitted to the United States in another valid nonimmigrant status who is continuing to maintain that status may apply to change nonimmigrant status to E-2 CNMI Investor in accordance with paragraph (e)(21) of this section, if otherwise eligible, including but not limited to having been in CNMI long-term investor status on the transition date and within the period provided by paragraph (e)(23)(v) of this section.

(xiv) *Expiration of initial transition period.* Upon expiration of the initial transition period, the E-2 CNMI Investor nonimmigrant status will automatically terminate.

(xv) *Fee waiver.* An alien applying for E-2 CNMI Investor nonimmigrant status is eligible for a waiver of the required fee for an application based upon inability to pay as provided by 8 CFR 103.7(c)(1).

(xvi) *Waiver of inadmissibility for applicants present in the CNMI.* An applicant for E-2 CNMI Investor nonimmigrant status, who is otherwise eligible for such status and otherwise admissible to the United States, and who has provided all appropriate documents as described in paragraph (e)(23)(vi) of this section, may be granted a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the Act, including the grounds of inadmissibility described in sections 212(a)(6)(A)(i) (to the extent

such grounds arise solely because of the alien's presence in the CNMI on November 28, 2009) and 212(a)(7)(B)(i)(II) of the Act, for the purpose of granting the E-2 CNMI Investor nonimmigrant status. Such waiver may be granted without additional form or fee required. In the case of an application by a spouse or child as described in paragraph (e)(23)(x) of this section who is present in the CNMI, the appropriate documents required for such waiver are a valid unexpired passport and evidence that the spouse or child is lawfully present in the CNMI under section 1806(e) of title 48, U.S. Code (which may include evidence of a grant of parole by USCIS or by the Department of Homeland Security pursuant to a grant of advance parole by USCIS in furtherance of section 1806(e) of title 48, U.S. Code).

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs—*(1) *Admission of student—*(i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(F) of the Act, if:

(A) The student presents a SEVIS Form I-20 issued in his or her own name by a school approved by the Service for attendance by F-1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I-20A-B/I-20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID);

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID)); and

(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers

the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.

(ii) *Disposition of Form I-20 A-B/I-20 ID.* Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (Student) Copy shall be referred to as the I-20 ID. When an F-1 student applies for admission with a complete Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number from Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the Form I-20 A-B;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I-20. A student or dependent who presents a non-SEVIS Form I-20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I-20 issued prior to January 30, 2003, will continue to be acceptable until August 1, 2003. However, schools must issue a SEVIS Form I-20 to any current student requiring a reportable action (e.g., extension of status, practical training, and requests for employment authorization) or a new Form I-20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

(2) *I-20 ID.* An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorse-

ment for employment and notations, may be issued by the designated school official (DSO) as defined in 8 CFR 214.3(l)(1)(i).

(3) *Admission of the spouse and minor children of an F-1 student.* The spouse and minor children accompanying an F-1 student are eligible for admission in F-2 status if the student is admitted in F-1 status. The spouse and minor children following-to-join an F-1 student are eligible for admission to the United States in F-2 status if they are able to demonstrate that the F-1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an F-1 student with a SEVIS Form I-20 must individually present an original SEVIS Form I-20 issued in the name of each F-2 dependent issued by a school authorized by the Service for attendance by F-1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an F-1 student in possession of a SEVIS Form I-20 to enter the United States using a copy of the F-1 student's SEVIS Form I-20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the F-1 student's current Form I-20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I-20 (or Form I-20A-B) is required for a dependent where there has been any substantive change in the F-1 student's current information.

(4) *Temporary absence.* An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at a Service-approved educational institution, if the student presents:

(i) A current SEVIS Form I-20 (or, for readmission prior to August 1, 2003, a current Form I-20ID which was issued prior to January 30, 2003), properly endorsed by the DSO for reentry if there has been no substantive change to the most recent Form I-20 information; or

(ii) A new SEVIS Form I-20 (or, for readmission prior to August 1, 2003, a

new Form I-20ID which was issued prior to January 30, 2003), if there has been a substantive change in the information on the student's most recent Form I-20 information, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service approved institution or who has advanced to a higher level of study.

(5) *Duration of status*—(i) *General*. Except for border commuter students covered by the provisions of paragraph (f)(18) of this section, an F-1 student is admitted for duration of status. Duration of status is defined as the time during which an F-1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, except that an F-1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F-1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I-20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.

(ii) *Change in educational levels*. An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational level is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

(iii) *Annual vacation*. An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

(iv) *Preparation for departure*. An F-1 student who has completed a course of study and any authorized practical

training following completion of studies will be allowed an additional 60-day period to prepare for departure from the United States or to transfer in accordance with paragraph (f)(8) of this section. An F-1 student authorized by the DSO to withdraw from classes will be allowed a 15-day period for departure from the United States. However, an F-1 student who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for an additional period for departure.

(v) *Emergent circumstances as determined by the Commissioner*. Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the FEDERAL REGISTER, an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the FEDERAL REGISTER will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.

(vi) *Extension of duration of status and grant of employment authorization*.

(A) The duration of status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) and (C), of an F-1 student who is the beneficiary of an H-1B petition and request for change of status shall be automatically extended until October 1 of the fiscal year for which such H-1B visa is being requested where such petition:

(1) Has been timely filed; and

(2) States that the employment start date for the F-1 student is October 1 of the following fiscal year.

(B) The automatic extension of an F-1 student's duration of status and employment authorization under paragraph (f)(5)(vi)(A) of this section shall immediately terminate upon the rejection, denial, or revocation of the H-1B petition filed on such F-1 student's behalf.

(C) In order to obtain the automatic extension of stay and employment authorization under paragraph (f)(5)(vi)(A) of this section, the F-1 student, according to 8 CFR part 248, must not have violated the terms or conditions of his or her nonimmigrant status.

(D) An automatic extension of an F-1 student's duration of status under paragraph (f)(5)(vi)(A) of this section also applies to the duration of status of any F-2 dependent aliens.

(6) *Full course of study*—(i) *General*. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A course of study at an institution not approved for attendance by foreign students as provided in §214.3(a)(3) does not satisfy this requirement. A “full course of study” as required by section 101(a)(15)(F)(i) of the Act means:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school which confers upon its graduates recog-

nized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a curriculum at an approved private elementary or middle school or public or private academic high school which is certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation.

(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the FEDERAL REGISTER shall be deemed to be engaged in a “full course of study” if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.

(G) For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-

line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F-1 student's course of study is in a language study program, no on-line or distance education classes may be considered to count toward a student's full course of study requirement.

(H) On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(ii) *Institution of higher learning.* For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. Vocational or business schools which are classifiable as M-1 schools are provided for by regulations under 8 CFR 214.2(m).

(iii) *Reduced course load.* The designated school official may allow an F-1 student to engage in less than a full course of study as provided in this paragraph (f)(6)(iii). Except as otherwise noted, a reduced course load must consist of at least six semester or quarter hours, or half the clock hours required for a full course of study. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(A) *Academic difficulties.* The DSO may authorize a reduced course load on account of a student's initial difficulty with the English language or reading requirements, unfamiliarity with U.S.

teaching methods, or improper course level placement. The student must resume a full course of study at the next available term, session, or semester, excluding a summer session, in order to maintain student status. A student previously authorized to drop below a full course of study due to academic difficulties is not eligible for a second authorization by the DSO due to academic difficulties while pursuing a course of study at that program level. A student authorized to drop below a full course of study for academic difficulties while pursuing a course of study at a particular program level may still be authorized for a reduced course load due to an illness medical condition as provided for in paragraph (B) of this section.

(B) *Medical conditions.* The DSO may authorize a reduced course load (or, if necessary, no course load) due to a student's temporary illness or medical condition for a period of time not to exceed an aggregate of 12 months while the student is pursuing a course of study at a particular program level. In order to authorize a reduced course load based upon a medical condition, the student must provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to the DSO to substantiate the illness or medical condition. The student must provide current medical documentation and the DSO must reauthorize the drop below full course of study each new term, session, or semester. A student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 12 months may not be authorized by a DSO to reduce his or her course load on subsequent occasions while pursuing a course of study at the same program level. A student may be authorized to reduce course load for a reason of illness or medical condition on more than one occasion while pursuing a course of study, so long as the aggregate period of that authorization does not exceed 12 months.

(C) *Completion of course of study.* The DSO may authorize a reduced course load in the student's final term, semester, or session if fewer courses are needed to complete the course of study.

If the student is not required to take any additional courses to satisfy the requirements for completion, but continues to be enrolled for administrative purposes, the student is considered to have completed the course of study and must take action to maintain status. Such action may include application for change of status or departure from the U.S.

(D) *Reporting requirements for non-SEVIS schools.* A DSO must report to the Service any student who is authorized to reduce his or her course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's current Form I-20ID along with Form I-538 to Service's data processing center indicating the date and reason that the student was authorized to drop below full time status. Similarly, the DSO will report to the Service no more than 21 days after the student has resumed a full course of study by submitting a current copy of the students' Form I-20ID to the Service's data processing center indicating the date a full course of study was resumed and the new program end date with Form I-538, if applicable.

(E) *SEVIS reporting requirements.* In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study. If an extension of the program end date is required due to the drop below a full course of study, the DSO must update SEVIS by completing a new SEVIS Form I-20 with the new program end date in accordance with paragraph (f)(7) of this section.

(iv) *Concurrent enrollment.* An F-1 student may be enrolled in two different Service-approved schools at one time as long as the combined enrollment amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I-20, and conduct subsequent certifications and updates to the Form I-20.

The DSO from this school is also responsible for all of the reporting requirements to the Service. In instances where a student is enrolled in programs with different full course of study requirements (e.g., clock hours vs. credit hours), the DSO is permitted to determine what constitutes a full time course of study.

(7) *Extension of stay*—(i) *General.* An F-1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of his or her educational objective. An F-1 student who is currently maintaining status and making normal progress toward completing his or her educational objective, but who is unable to complete his or her course of study by the program end date on the Form I-20, must apply prior to the program end date for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Report date and program completion date on Form I-20.* When determining the report date on the Form I-20, the DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes. Such required activities may include, but are not limited to, research projects and orientation sessions. However, for purposes of employment, the DSO may not indicate a report date more than 30 days prior to the start of classes. When determining the program completion date on Form I-20, the DSO should make a reasonable estimate based upon the time an average student would need to complete a similar program in the same discipline.

(iii) *Program extension for students in lawful status.* An F-1 student who is unable to meet the program completion date on the Form I-20 may be granted an extension by the DSO if the DSO certifies that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not

acceptable reasons for program extensions. A DSO may not grant an extension if the student did not apply for an extension until after the program end date noted on the Form I-20. An F-1 student who is unable to complete the educational program within the time listed on Form I-20 and who is ineligible for program extension pursuant to this paragraph (f)(7) is considered out of status. If eligible, the student may apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(iv) *Notification.* Upon granting a program extension, a DSO at a non-SEVIS school must immediately submit notification to the Service's data processing center using Form I-538 and the top page of Form I-20A-B showing the new program completion date. For a school enrolled in SEVIS, a DSO may grant a program extension only by updating SEVIS and issuing a new Form I-20 reflecting the current program end date. A DSO may grant an extension any time prior to the program end date listed on the student's original Form I-20.

(8) *School transfer.* (i) A student who is maintaining status may transfer to another Service approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. However, an F-1 student is not permitted to remain in the United States when transferring between schools or programs unless the student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I-20, whichever is earlier. In the case of an F-1 student authorized to engage in post-completion optional practical training (OPT), the student must be able resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section, or, in the alternative, may depart the country and re-

turn as an initial entry in a new F-1 nonimmigrant status.

(ii) *Transfer procedure.* To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 A-B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer from one non-SEVIS school to a different non-SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. The transfer will be effected only if the student completes the Student Certification portion of the Form I-20 and returns the form to a DSO of the transfer school within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must note "transfer completed on (date)" in the space provided for the DSO's remarks, thereby acknowledging the student's attendance at the transfer school; return the Form I-20 to the student; submit the School copy of the Form I-20 to Service's Data Processing Center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

(B) *Non-SEVIS school to SEVIS school.* To transfer from a non-SEVIS school to a SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a SEVIS Form I-20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at

the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. Once the transfer school has issued the SEVIS Form I-20 to the student indicating a transfer, the transfer school becomes responsible for updating and maintaining the student's record in SEVIS. The student is then required to notify the DSO at the transfer school within 15 days of the program start date listed on SEVIS Form I-20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school updates SEVIS indicating that the student has registered in classes within the 30 days required by §214.3(g)(3)(iii).

(C) *SEVIS school to SEVIS school.* To transfer from a SEVIS school to a SEVIS school the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as a "transfer out" and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The current school conveys authority and responsibility over that student to the transfer

school, and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the current DSO after the release date has been reached. After the release date, the transfer DSO must complete the transfer of the student's record in SEVIS and may issue a SEVIS Form I-20. The student is then required to contact the DSO at the transfer school within 15 days of the program start date listed on the SEVIS Form I-20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by §214.3(g)(3)(iii).

(D) *SEVIS school to non-SEVIS school.* To transfer from a SEVIS school to a non-SEVIS school, the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's status in SEVIS as "a transfer out", enter a "release" or expected transfer date, and update the transfer school as "non-SEVIS." The student must then notify the school to which he or she intends to transfer of his or her intent to enroll. After the student has completed his or her current term or session, or has reached the expected transfer date, the DSO at the current school will no longer have full access to the student's SEVIS record. At this point, if the student has notified the transfer school of his or her intent to transfer, and the transfer school has determined that the student has been maintaining status at his or her current school, the transfer school may issue the student a Form I-20. The transfer will be effected only if the student completes the Student Certification portion of the Form I-20 and returns the form to a designated school

official of the transfer school within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must do as follows: note "transfer completed on (date)" in the space provided for the DSO's remarks, thereby acknowledging the student's attendance; return the Form I-20 to the student; submit the school copy of the Form I-20 to the Service's data processing center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

(iii) *Notification.* Upon receipt of the student's Form I-20 A-B, the DSO must:

(A) Note "transfer completed on (date)" on the student's I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance;

(B) Return the I-20 ID to the student;

(C) Submit the I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

(D) Forward a photocopy of the Form I-20 A-B School Copy to the school from which the student transferred.

(9) *Employment*—(i) *On-campus employment.* On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emer-

gent circumstances, as determined by the Commissioner, by means of notice in the FEDERAL REGISTER, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the FEDERAL REGISTER document. An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents. In the case of a transfer in SEVIS, the student may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, an F-1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.

(ii) *Off-campus work authorization*—

(A) *General.* An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. The employment authorization is automatically terminated whenever the student fails to maintain status. In emergent circumstances as determined by the Commissioner, the Commissioner may

suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the FEDERAL REGISTER.

(B) [Reserved]

(C) *Severe economic hardship.* If other employment opportunities are not available or are otherwise insufficient, an eligible F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses.

(D) *Procedure for off-campus employment authorization due to severe economic hardship.* The student must request a recommendation from the DSO for off-campus employment. The DSO at a non-SEVIS school must make such a certification on Form I-538, Certification by Designated School Official. The DSO of a SEVIS school must complete such certification in SEVIS. The DSO may recommend the student for work off-campus for one year intervals by certifying that:

(1) The student has been in F-1 status for one full academic year;

(2) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(3) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(4) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section and has demonstrated that employment under paragraph (f)(9)(i) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) [Reserved]

(F) *Severe economic hardship application.* (1) The applicant should submit the economic hardship application for employment authorization on Form I-765, with the fee required by 8 CFR 103.7(b)(1), to the service center having jurisdiction over his or her place of residence. Applicants at a non-SEVIS school should submit Form I-20, Form I-538, and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraph (f)(9)(i) of this section. Students enrolled in a SEVIS school should submit the SEVIS Form I-20 with the employment page demonstrating the DSO's comments and certification.

(2) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Off-campus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status.

(iii) *Internship with an international organization.* A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization to the service center having jurisdiction over his or her place of residence. A student seeking

employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, Form I-20 ID or SEVIS Form I-20 with employment page completed by DSO certifying eligibility for employment, and a completed Form I-765, with required fee as contained in §103.7(b)(1) of this chapter.

(10) *Practical training.* Practical training may be authorized to an F-1 student who has been lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for one full academic year. This provision also includes students who, during their course of study, were enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible student may request employment authorization for practical training in a position that is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training.* An F-1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be

made to the DSO. A student may begin curricular practical training only after receiving his or her Form I-20 with the DSO endorsement.

(A) *Non-SEVIS process.* A student must request authorization for curricular practical training using Form I-538. Upon approving the request for authorization, the DSO shall: certify Form I-538 and send the form to the Service's data processing center; endorse the student's Form I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and sign and date the Form I-20ID before returning it to the student.

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I-20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I-20 to the student prior to the student's commencement of employment.

(ii) *Optional practical training.*

(A) *General.* Consistent with the application and approval process in paragraph (f)(11) of this section, a student may apply to USCIS for authorization for temporary employment for optional practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I-766. A student may be granted authorization to engage in temporary employment for optional practical training:

(1) During the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;

(2) While school is in session, provided that practical training does not

exceed 20 hours a week while school is in session; or

(3) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except that a 17-month extension pursuant to paragraph (f)(10)(ii)(C) of this section does not need to be completed within such 14-month period.

(B) *Termination of practical training.* Authorization to engage in optional practical training employment is automatically terminated when the student transfers to another school or begins study at another educational level.

(C) *17-month extension of post-completion OPT for students with a science, technology, engineering, or mathematics (STEM) degree.* Consistent with paragraph (f)(11)(i)(C) of this section, a qualified student may apply for an extension of OPT while in a valid period of post-completion OPT. The extension will be for an additional 17 months, for a maximum of 29 months of OPT, if all of the following requirements are met.

(1) The student has not previously received a 17-month OPT extension after earning a STEM degree.

(2) The degree that was the basis for the student's current period of OPT is a bachelor's, master's, or doctoral degree in one of the degree programs on the current STEM Designated Degree Program List, published on the SEVP Web site at <http://www.ice.gov/sevis>.

(3) The student's employer is registered in the E-Verify program, as evidenced by either a valid E-Verify company identification number or, if the employer is using a designated agent to perform the E-Verify queries, a valid E-Verify client company identification number, and the employer is a participant in good standing in the E-Verify program, as determined by USCIS.

(4) The employer agrees to report the termination or departure of an OPT employee to the DSO at the student's

school or through any other means or process identified by DHS if the termination or departure is prior to end of the authorized period of OPT. Such reporting must be made within 48 hours of the event. An employer shall consider a worker to have departed when the employer knows the student has left the employment or if the student has not reported for work for a period of 5 consecutive business days without the consent of the employer, whichever occurs earlier.

(D) *Duration of status while on post-completion OPT.* For a student with approved post-completion OPT, the duration of status is defined as the period beginning when the student's application for OPT was properly filed and pending approval, including the authorized period of post-completion OPT, and ending 60 days after the OPT employment authorization expires (allowing the student to prepare for departure, change educational levels at the same school, or transfer in accordance with paragraph (f)(8) of this section).

(E) *Periods of unemployment during post-completion OPT.* During post-completion OPT, F-1 status is dependent upon employment. Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT carried out under the initial post-completion OPT authorization. Students granted a 17-month OPT extension may not accrue an aggregate of more than 120 days of unemployment during the total OPT period comprising any post-completion OPT carried out under the initial post-completion OPT authorization and the subsequent 17-month extension period.

(11) *OPT application and approval process—(i) Student responsibilities.* A student must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the student a signed Form I-20 indicating that recommendation.

(A) *Application for employment authorization.* The student must properly file a Form I-765, Application for Employment Authorization, with USCIS, accompanied by the required fee for the

Form I-765, and the supporting documents, as described in the form's instructions.

(B) *Filing deadlines for pre-completion OPT and post-completion OPT.*

(1) Students may file a Form I-765 for pre-completion OPT up to 90 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the full academic year.

(2) For post-completion OPT, the student must properly file his or her Form I-765 up to 90 days prior to his or her program end-date and no later than 60 days after his or her program end-date. The student must also file the Form I-765 with USCIS within 30 days of the date the DSO enters the recommendation for OPT into his or her SEVIS record.

(C) *Applications for 17-month OPT extension.* A student meeting the eligibility requirement in paragraph (f)(10)(ii)(C) of this section may file for a 17-month extension of employment authorization by filing Form I-765, Application for Employment Authorization, with the appropriate fee, prior to the expiration date of the student's current OPT employment authorization. If a student timely and properly files an application for a 17-month OPT extension, but the Form I-766, Employment Authorization Document, currently in the student's possession, expires prior to the decision on the student's application for 17-month OPT extension, the student's Form I-766 is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

(D) *Start of employment.* A student may not begin employment prior to the approved starting date on his or her employment authorization except as noted in paragraph (f)(11)(i)(C) of this section. A student may not request a start date that is more than 60 days after the student's program end date. Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.

(ii) *DSO responsibilities.* A student needs a recommendation from his or her DSO in order to apply for OPT. When a DSO recommends a student for OPT, the school assumes the added re-

sponsibility for maintaining the SEVIS record of that student for the entire period of authorized OPT, consistent with paragraph (f)(12) of this section.

(A) Prior to making a recommendation, the DSO must ensure that the student is eligible for the given type and period of OPT and that the student is aware of his or her responsibilities for maintaining status while on OPT. Prior to recommending a 17-month OPT extension, the DSO must certify that the student's degree, as shown in SEVIS, is a bachelor's, master's, or doctorate degree with a degree code that is on the current STEM Designated Degree Program List.

(B) The DSO must update the student's SEVIS record with the DSO's recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment.

(C) The DSO must provide the student with a signed, dated Form I-20 indicating that OPT has been recommended.

(iii) *Decision on application for OPT employment authorization.* USCIS will adjudicate the Form I-765 and, if approved, issue an EAD on the basis of the DSO's recommendation and other eligibility considerations.

(A) The employment authorization period for post-completion OPT begins on the date requested or the date the employment authorization application is approved, whichever is later, and ends at the conclusion of the remaining time period of post-completion OPT eligibility. The employment authorization period for the 17-month OPT extension begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 17 months thereafter, regardless of the date the actual extension is approved.

(B) USCIS will notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial.

(C) The applicant may not appeal the decision.

(12) *Reporting while on optional practical training.*

(i) *General.* An F-1 student who is authorized by USCIS to engage in optional practical training (OPT) employment is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the optional practical training. A DSO who recommends a student for OPT is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

(ii) *Additional reporting obligations for students with an approved 17-month OPT.* Students with an approved 17-month OPT extension have additional reporting obligations. Compliance with these reporting requirements is required to maintain F-1 status. The reporting obligations are:

(A) Within 10 days of the change, the student must report to the student's DSO a change of legal name, residential or mailing address, employer name, employer address, and/or loss of employment.

(B) The student must make a validation report to the DSO every six months starting from the date the extension begins and ending when the student's F-1 status ends, the student changes educational levels at the same school, or the student transfers to another school or program, or the 17-month OPT extension ends, whichever is first. The validation is a confirmation that the student's information in SEVIS for the items in listed in paragraph (f)(12)(ii)(A) of this section is current and accurate. This report is due to the student's DSO within 10 business days of each reporting date.

(13) *Temporary absence from the United States of F-1 student granted employment authorization.* (i) A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. The EAD must be used in combination with an I-

20 ID endorsed for reentry by the DSO within the last six months.

(14) *Effect of strike or other labor dispute.* Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee, that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means the facility or facilities where a labor dispute exists. The employer is prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.

(15) *Spouse and children of F-1 student.* The F-2 spouse and minor children of an F-1 student shall each be issued an individual SEVIS Form I-20 in accordance with the provisions of §214.3(k).

(i) *Employment.* The F-2 spouse and children of an F-1 student may not accept employment.

(ii) *Study—(A) F-2 post-secondary/vocational study—(1) Authorized study at SEVP-certified schools.* An F-2 spouse or F-2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) and (m)(9)(i) through (iv), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (iv) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the F-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An F-2 spouse or F-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraphs (f)(9) and (10) of this section or pursuant to paragraph (m)(14) of this section.

(2) *Full course of study.* Subject to paragraphs (f)(15)(ii)(B) and (f)(18) of this section, an F-2 spouse and child may engage in a full course of study only by applying for and obtaining a

change of status to F–1, M–1 or J–1 non-immigrant status, as appropriate, before beginning a full course of study. An F–2 spouse and child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) *F–2 elementary or secondary study.* An F–2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An F–2 spouse and child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

(16) *Reinstatement to student status*—(i) *General.* The district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Non-immigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO’s recommendation for reinstatement (or a properly completed Form I–20A–B issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

(B) Does not have a record of repeated or willful violations of Service regulations;

(C) Is currently pursuing, or intending to pursue, a full course of study in the immediate future at the school which issued the Form I–20;

(D) Has not engaged in unauthorized employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(1) The violation of status resulted from circumstances beyond the student’s control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight, or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(2) The violation relates to a reduction in the student’s course load that would have been within a DSO’s power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student’s copy of Form I–20 to indicate the student has been reinstated and return the form to the student. If the Form I–20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I–20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service’s decision. In either case, if the Service does not reinstate the student, the student may not appeal that decision.

(17) *Current name and address.* A student must inform the DSO and the Service of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, who in turn shall enter the information in SEVIS within 21 days of notification by the student. A student enrolled at a non-SEVIS school must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service,

the actual physical location where the student resides.

(18) *Special rules for certain border commuter students*—(i) *Applicability*. For purposes of the special rules in this paragraph (f)(18), the term “border commuter student” means a national of Canada or Mexico who is admitted to the United States as an F-1 non-immigrant student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student’s country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an F-1 student, or

(B) Enrolled in a full course of study as defined in paragraph (f)(6) of this section.

(ii) *Full course of study*. The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (f)(6) of this section, provided that the reduced course load is consistent with the border commuter student’s approved course of study.

(iii) *Period of admission*. An F-1 non-immigrant student who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student’s current term of study. A new Form I-20 will be required for each new semester or term that the border commuter student attends at the school. The provisions of paragraphs (f)(5) and (f)(7) of this section, relating to duration of status and extension of stay, are not applicable to a border commuter student.

(iv) *Employment*. A border commuter student may not be authorized to accept any employment in connection with his or her F-1 student status, except for curricular practical training as provided in paragraph (f)(10)(i) of this section or post-completion optional practical training as provided in paragraph (f)(10)(ii)(A)(3) of this section.

(19) *Remittance of the fee*. An alien who applies for F-1 or F-3 non-immigrant status in order to enroll in a program of study at a Department of Homeland Security (DHS)-approved educational institution is required to pay the Student and Exchange Visitor Information System (SEVIS) fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

(g) *Representatives to international organizations*—(1) *General*. The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(G) of the Act. An alien who has a nonimmigrant status under section 101(a)(15)(G) (i), (ii), (iii) or (iv) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section 101(a)(15)(G)(v) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he or she intends to continue to employ the applicant and describing the type of work the applicant will perform.

(2) *Definition of G-1, G-3, or G-4 dependent*. For purposes of employment in the United States, the term *dependent* of a G-1, G-3, or G-4 principal alien, as used in §214.2(g), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer or employee assigned to a mission, to an international organization, or is employed by an international organization in the United States:

- (i) Spouse;
- (ii) Unmarried children under the age of 21;
- (iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;
- (iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states which the United States has such bilateral employment agreements. The provisions of this paragraph apply only to G-1 and G-3 dependents under certain bilateral agreements and are not applicable to G-4 dependents;
- (v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain, or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability; or
- (vi) An immediate family member of a G-1, G-3, or G-4 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with G-1, G-3, or G-4 nonimmigrant status who falls within a category of aliens designated by the Department of State as qualifying dependents.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for G-1 and G-3 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him or her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *G-1 and G-3 dependent employment pursuant to formal bilateral employment agreements and informal de facto reciprocal arrangements, and G-4 dependent employment.* (i) The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of a G-1 or G-3 principal alien assigned to official duty in the United States may accept or continue in unrestricted employment based on such formal bilateral agreements, if the applicable agreement includes persons in G-1 or G-3 visa status, upon favorable recommendation by the Department of State and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (g)(6) of this section.

(ii) For purposes of this section, an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of a G-1 or G-3 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment based upon informal de facto arrangements, and dependents of a G-4 principal alien assigned to official duty in the United States may be authorized to accept or continue in employment upon favorable recommendation by the Department of State and issuance of

Department of Homeland Security

§214.2

employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the procedures set forth in paragraph (g)(6) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent desiring employment are maintaining G-1, G-3, or G-4 status as appropriate;

(B) The principal's assignment in the United States is expected to last more than six months;

(C) Employment of a similar nature for dependents of United States Government officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign government. The provisions of this paragraph apply only to G-1 and G-3 dependents;

(D) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of G-1, G-3, or G-4 dependents: who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; and/or who cannot establish that they have paid taxes and social security on income from current or previous United States employment. Additionally, the Department of State may determine a G-4 dependent's employment is contrary to the interest of the United States when the principal alien's country of nationality has one or more components of an international organization or international organizations within its borders and does not allow the employment of de-

pendents of United States citizens employed by such component(s) or organization(s).

(6) *Application procedures.* The following procedures are applicable to G-1 and G-3 dependent employment applications under bilateral agreements and de facto arrangements, as well as to G-4 dependent employment applications:

(i) The dependent must submit a completed Form I-566 to the Department of State through the office, mission, or organization which employs his or her principal alien. If the principal is assigned to or employed by the United Nations, the Form I-566 must be submitted to the U.S. Mission to the United Nations. All other applications must be submitted to the Office of Protocol of the Department of State. A dependent applying under paragraph (g)(2) (iii) or (iv) of this section must submit a certified statement from the post-secondary educational institution confirming that he or she is pursuing studies on a full-time basis. A dependent applying under paragraph (g)(2)(v) of this section must submit medical certification regarding his or her condition. The certification should identify the dependent and the certifying physician and give the physician's phone number; identify the condition, describe the symptoms and provide a prognosis; certify that the dependent is unable to establish, re-establish, and maintain a home or his or her own. Additionally, a G-1 or G-3 dependent applying under the terms of a de facto arrangement or a G-4 dependent must attach a statement from the prospective employer which includes the dependent's name; a description of the position offered and the duties to be performed; the salary offered; and verification that the dependent possesses the qualifications for the position.

(ii) The Department of State reviews and verifies the information provided, makes its determination, and endorses the Form I-566.

(iii) If the Department of State's endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I-566 with a favorable endorsement

from the Department of State and any additional documentation as may be required by the Secretary.

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than three years each.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified G–2 or G–5.* A dependent or family member of a principal alien classified G–2 or G–5 may not be employed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section 101(a)(15)(G) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(1)(C)(i) of the Act. An alien who is classified under section 101(a)(15)(G) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(1)(C)(i) of the Act.

(11) *Special provision.* As of February 16, 1990 no new employment authorization will be granted and no pre-existing employment authorization will be extended for a G–1 dependent absent an appropriate bilateral agreement or de facto arrangement. However, a G–1 dependent who has been granted employment authorization by the Department of State prior to the effective date of this section and who meets the definition of dependent under §214.2(g)(2) (i), (ii), (iii) or (v) of this part but is not covered by the terms of a bilateral agreement or de facto arrangement may be allowed to continue in employment until whichever of the following occurs first:

(i) The employment authorization by the Department of State expires; or

(ii) He or she no longer qualifies as a dependent as that term is defined in this section; or

(iii) March 19, 1990.

(h) *Temporary employees—(1) Admission of temporary employees—(i) General.*

Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: under section 101(a)(15)(H)(i)(c) of the Act as a registered nurse; under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit and ability; under section 101(a)(15)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature; under section 101(a)(15)(H)(ii)(b) of the Act as an alien coming to perform other temporary services or labor; or under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee or as a participant in a special education exchange visitor program. These classifications are called H–1C, H–1B, H–2A, H–2B, and H–3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.* (A) An H–1C classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility (as defined at section 212(m)(6) of the Act) for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act. This classification will expire 4 years from June 11, 2001.

(B) An H–1B classification applies to an alien who is coming temporarily to the United States:

Department of Homeland Security

§214.2

(1) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

(2) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(3) To perform services as a fashion model of distinguished merit and ability and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act.

(C) An H-2A classification applies to an alien who is coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.

(D) An H-2B classification applies to an alien who is coming temporarily to the United States to perform nonagricultural work of a temporary or seasonal nature, if there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such services or labor. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor described on the approved temporary labor certification are subject to review by USCIS. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam prior to the filing of a petition with USCIS.

(E) An H-3 classification applies to an alien who is coming temporarily to the United States:

(1) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution, or

(2) As a participant in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) *Petitions—(i) Filing of petitions—*

(A) *General.* A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee must file a petition on Form I-129, Petition for Nonimmigrant Worker, as provided in the form instructions.

(B) *Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

(C) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for, or receive training from, more than one employer, each employer must file a separate petition with USCIS as provided in the form instructions.

(D) *Change of employers.* If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I-129 requesting classification and an extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay must conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. Except as provided by 8 CFR 274a.12(b)(21) or section 214(n) of the Act, 8 U.S.C. 1184(n), the alien is not authorized to begin the employment with the new petitioner until the petition is approved. An H-1C nonimmigrant alien may not change employers.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions;

(1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to

explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(G) *Multiple H-1B petitions.* An employer may not file, in the same fiscal year, more than one H-1B petition on behalf of the same alien if the alien is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. If an H-1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H-1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise, filing more than one H-1B petition by an employer on behalf of the same alien in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H-1B petition on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H-1B petition on behalf of the same alien, all petitions filed on that alien's behalf by the related entities will be denied or revoked.

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H-1C, H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location H-2A and H-2B petitions for workers from countries not designated in accordance with paragraph (h)(6)(i)(E) of this section should be filed separately.

(iii) *Naming beneficiaries.* H-1B, H-1C, and H-3 petitions must include the name of each beneficiary. Except as provided in this paragraph (h), all H-2A and H-2B petitions must include the name of each beneficiary who is currently in the United States, but need not name any beneficiary who is not currently in the United States. Unnamed beneficiaries must be shown on the petition by total number. USCIS may require the petitioner to name H-2B beneficiaries where the name is needed to establish eligibility for H-2B nonimmigrant status. If all of the beneficiaries covered by an H-2A or H-2B temporary labor certification have not been identified at the time a petition is filed, multiple petitions for subsequent beneficiaries may be filed at different times but must include a copy of the same temporary labor certification. Each petition must reference all previously filed petitions associated with that temporary labor certification. All H-2A and H-2B petitions on behalf of workers who are not from a country that has been designated as a participating country in accordance with paragraphs (h)(5)(i)(F)(I) or (h)(6)(i)(E)(I) of this section must name all the workers in the petition who fall within these categories. All H-2A and H-2B petitions must state the nationality of all beneficiaries, whether or not named, even if there are beneficiaries from more than one country.

(iv) [Reserved]

(v) *H-2A Petitions.* Special criteria for admission, extension, and maintenance of status apply to H-2A petitions and are specified in paragraph (h)(5) of this section. The other provisions of §214.2(h) apply to H-2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (h)(5) of this section.

(3) *Petition for registered nurse (H-1C)—(i) General.* (A) For purposes of H-1C classification, the term “registered nurse” means a person who is or will be authorized by a State Board of Nursing to engage in registered nurse practice in a state or U.S. territory or possession, and who is or will be practicing at a facility which provides health care services.

(B) A United States employer which provides health care services is re-

ferred to as a *facility*. A *facility* may file an H-1C petition for an alien nurse to perform the services of a registered nurse, if the *facility* meets the eligibility standards of 20 CFR 655.1111 and the other requirements of the Department of Labor’s regulations in 20 CFR part 655, subpart L.

(C) The position must involve nursing practice and require licensure or other authorization to practice as a registered nurse from the State Board of Nursing in the state of intended employment.

(ii) [Reserved]

(iii) *Beneficiary requirements.* An H-1C petition for a nurse shall be accompanied by evidence that the nurse:

(A) Has obtained a full and unrestricted license to practice nursing in the country where the alien obtained nursing education, or has received nursing education in the United States;

(B) Has passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or has obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or has obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and

(C) Is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and is authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States.

(iv) *Petitioner requirements.* The petitioning facility shall submit the following with an H-1C petition:

(A) A current copy of the DOL’s notice of acceptance of the filing of its attestation on Form ETA 9081;

(B) A statement describing any limitations which the laws of the state or

§214.2

8 CFR Ch. I (1–16 Edition)

jurisdiction of intended employment place on the alien's services; and

(C) Evidence that the alien(s) named on the petition meets the definition of a registered nurse as defined at 8 CFR 214.2(h)(3)(i)(A), and satisfies the requirements contained in section 212(m)(1) of the Act.

(v) *Licensure requirements.* (A) A nurse who is granted H-1C classification based on passage of the CGFNS examination must, upon admission to the United States, be able to obtain temporary licensure or other temporary authorization to practice as a registered nurse from the State Board of Nursing in the state of intended employment.

(B) An alien who was admitted as an H-1C nonimmigrant on the basis of a temporary license or authorization to practice as a registered nurse must comply with the licensing requirements for registered nurses in the state of intended employment. An alien admitted as an H-1C nonimmigrant is required to obtain a full and unrestricted license if required by the state of intended employment. The Service must be notified pursuant to §214.2(h)(11) when an H-1C nurse is no longer licensed as a registered nurse in the state of intended employment.

(C) A nurse shall automatically lose his or her eligibility for H-1C classification if he or she is no longer performing the duties of a registered professional nurse. Such a nurse is not authorized to remain in employment unless he or she otherwise receives authorization from the Service.

(vi) *Other requirements.* (A) If the Secretary of Labor notifies the Service that a facility which employs H-1C nonimmigrant nurses has failed to meet a condition in its attestation, or that there was a misrepresentation of a material fact in the attestation, the Service shall not approve petitions for H-1C nonimmigrant nurses to be employed by the facility for a period of at least 1 year from the date of receipt of such notice. The Secretary of Labor shall make a recommendation with respect to the length of debarment. If the Secretary of Labor recommends a longer period of debarment, the Service will give considerable weight to that recommendation.

(B) If the facility's attestation expires, or is suspended or invalidated by DOL, the Service will not suspend or revoke the facility's approved petitions for nurses, if the facility has agreed to comply with the terms of the attestation under which the nurses were admitted or subsequent attestations accepted by DOL for the duration of the nurses' authorized stay.

(4) *Petition for alien to perform services in a specialty occupation, services relating to a DOD cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling (H-1B)—*

(i)(A) *Types of H-1B classification.* An H-1B classification may be granted to an alien who:

(1) Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation;

(2) Based on reciprocity, will perform services of an exceptional nature requiring exceptional merit and ability relating to a DOD cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(3) Will perform services in the field of fashion modeling and who is of distinguished merit and ability.

(B) *General requirements for petitions involving a specialty occupation.* (1) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

(2) Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The

director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(3) If all of the beneficiaries covered by an H-1B labor condition application have not been identified at the time a petition is filed, petitions for newly identified beneficiaries may be filed at any time during the validity of the labor condition application using photocopies of the same application. Each petition must refer by file number to all previously approved petitions for that labor condition application.

(4) When petitions have been approved for the total number of workers specified in the labor condition application, substitution of aliens against previously approved openings shall not be made. A new labor condition application shall be required.

(5) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, the Service shall not approve petitions filed with respect to that employer under section 204 or 214(c) of the Act for a period of at least one year from the date of receipt of such notice.

(6) If the employer's labor condition application is suspended or invalidated by the Department of Labor, the Service will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations if the employer has certified to the Department of Labor that it will comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(C) *General requirements for petitions involving an alien of distinguished merit and ability in the field of fashion modeling.* H-1B classification may be grant-

ed to an alien who is of distinguished merit and ability in the field of fashion modeling. An alien of distinguished merit and ability in the field of fashion modeling is one who is prominent in the field of fashion modeling. The alien must also be coming to the United States to perform services which require a fashion model of prominence.

(ii) *Definitions.*

Prominence means a high level of achievement in the field of fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of fashion modeling.

Regonized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

(1) The writer's qualifications as an expert;

(2) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

(3) How the conclusions were reached; and

(4) The basis for the conclusions supported by copies or citations of any research material used.

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

(1) Engages a person to work within the United States;

(2) Has an employer-employee relationship with respect to employees under this part, as indicated by the

fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(3) Has an Internal Revenue Service Tax identification number.

(iii) *Criteria for H-1B petitions involving a specialty occupation*—(A) *Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

(B) *Petitioner requirements.* The petitioner shall submit the following with an H-1B petition involving a specialty occupation:

(1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

(2) A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

(3) Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(A) of this section, and

(C) *Beneficiary qualifications.* To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree re-

quired by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

(D) *Equivalence to completion of a college degree.* For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of

authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

(iv) *General documentary requirements for H-1B classification in a specialty occupation.* An H-1B petition involving a specialty occupation shall be accompanied by:

(A) Documentation, certifications, affidavits, declarations, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is qualified to perform services in a specialty occupation as described in paragraph (h)(4)(i) of this section and that the services the beneficiary is to perform are in a specialty occupation. The evidence shall conform to the following:

(1) School records, diplomas, degrees, affidavits, declarations, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired.

(2) Affidavits or declarations made under penalty of perjury submitted by present or former employers or recognized authorities certifying as to the recognition and expertise of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary

will be employed, if there is no written contract.

(v) *Licensure for H classification*—(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) *H-1C nurses.* For purposes of licensure, H-1C nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.

(E) *Limitation on approval of petition.* Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or con-

tinues to hold a temporary license valid in the same state for the period of the requested extension.

(vi) *Criteria and documentary requirements for H-1B petitions involving DOD cooperative research and development projects or coproduction projects*—(A) *General.* (1) For purposes of H-1B classification, services of an exceptional nature relating to DOD cooperative research and development projects or coproduction projects shall be those services which require a baccalaureate or higher degree, or its equivalent, to perform the duties. The existence of this special program does not preclude the DOD from utilizing the regular H-1B provisions provided the required guidelines are met.

(2) The requirements relating to a labor condition application from the Department of Labor shall not apply to petitions involving DOD cooperative research and development projects or coproduction projects.

(B) *Petitioner requirements.* (1) The petition must be accompanied by a verification letter from the DOD project manager for the particular project stating that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by DOD. Details about the specific project are not required.

(2) The petitioner shall provide a general description of the alien's duties on the particular project and indicate the actual dates of the alien's employment on the project.

(3) The petitioner shall submit a statement indicating the names of aliens currently employed on the project in the United States and their dates of employment. The petitioner shall also indicate the names of aliens whose employment on the project ended within the past year.

(C) *Beneficiary requirement.* The petition shall be accompanied by evidence that the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which he or she will be performing services in accordance with paragraph (h)(4)(iii)(C) and/or (h)(4)(iii)(D) of this section.

(vii) *Criteria and documentary requirements for H-1B petitions for aliens of distinguished merit and ability in the field of fashion modeling*—(A) *General*. Prominence in the field of fashion modeling may be established in the case of an individual fashion model. The work which a prominent alien is coming to perform in the United States must require the services of a prominent alien. A petition for an H-1B alien of distinguished merit and ability in the field of fashion modeling shall be accompanied by:

(1) Documentation, certifications, affidavits, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a fashion model of distinguished merit and ability. Affidavits submitted by present or former employers or recognized experts certifying to the recognition and distinguished ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(2) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(B) *Petitioner's requirements*. To establish that a position requires prominence, the petitioner must establish that the position meets one of the following criteria:

(1) The services to be performed involve events or productions which have a distinguished reputation;

(2) The services are to be performed for an organization or establishment that has a distinguished reputation for, or record of, employing prominent persons.

(C) *Beneficiary's requirements*. A petitioner may establish that a beneficiary is a fashion model of distinguished merit and ability by the submission of two of the following forms of documentation showing that the alien:

(1) Has achieved national or international recognition and acclaim for outstanding achievement in his or her field as evidenced by reviews in major

newspapers, trade journals, magazines, or other published material;

(2) Has performed and will perform services as a fashion model for employers with a distinguished reputation;

(3) Has received recognition for significant achievements from organizations, critics, fashion houses, modeling agencies, or other recognized experts in the field; or

(4) Commands a high salary or other substantial remuneration for services evidenced by contracts or other reliable evidence.

(viii) *Criteria and documentary requirements for H-1B petitions for physicians*—(A) *Beneficiary's requirements*. An H-1B petition for a physician shall be accompanied by evidence that the physician:

(1) Has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires the license or authorization, and

(2) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(B) *Petitioner's requirements*. The petitioner must establish that the alien physician:

(1) Is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency, and that no patient care will be performed, except that which is incidental to the physician's teaching or research; or

(2) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) or is a graduate of a United States medical school; and

(i) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(ii) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

(C) *Exception for physicians of national or international renown.* A physician who is a graduate of a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements of paragraph (h)(4)(viii)(B) of this section.

(5) *Petition for alien to perform agricultural labor or services of a temporary or seasonal nature (H-2A)*—(i) *Filing a petition*—

(A) *General.* An H-2A petition must be filed on Form I-129 with a single valid temporary agricultural labor certification. The petition may be filed by either the employer listed on the temporary labor certification, the employer's agent, or the association of United States agricultural producers named as a joint employer on the temporary labor certification.

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same temporary labor certification may not exceed the number of workers indicated on that document. A single petition can include more than one beneficiary if the total number does not exceed the number of positions indicated on the relating temporary labor certification.

(C) [Reserved]

(D) *Evidence.* An H-2A petitioner must show that the proposed employment qualifies as a basis for H-2A status, and that any named beneficiary qualifies for that employment. A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(A) of this section and, for each named beneficiary, the initial evidence required in paragraph (h)(5)(v) of this section.

(E) *Special filing requirements.* Where a certification shows joint employers, a petition must be filed with an attachment showing that each employer has agreed to the conditions of H-2A eligibility. A petition filed by an agent must be filed with an attachment in which the employer has authorized the agent to act on its behalf, has assumed full responsibility for all representations made by the agent on its behalf, and has agreed to the conditions of H-2A eligibility.

(F) *Eligible Countries.* (1)(i) H-2A petitions may only be approved for nationals of countries that the Secretary of Homeland Security has designated as participating countries, with the concurrence of the Secretary of State, in a notice published in the FEDERAL REGISTER, taking into account factors, including but not limited to:

(A) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals and residents of that country who are subject to a final order of removal;

(B) The number of final and unexecuted orders of removal against citizens, subjects, nationals and residents of that country;

(C) The number of orders of removal executed against citizens, subjects, nationals and residents of that country; and

(D) Such other factors as may serve the U.S. interest.

(ii) A national from a country not on the list described in paragraph (h)(5)(i)(F)(1)(i) of this section may be a beneficiary of an approved H-2A petition upon the request of a petitioner or potential H-2A petitioner, if the Secretary of Homeland Security, in his sole and unreviewable discretion, determines that it is in the U.S. interest for that alien to be a beneficiary of such petition. Determination of such a U.S. interest will take into account factors, including but not limited to:

(A) Evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in paragraph (h)(5)(i)(F)(1)(i) of this section;

(B) Evidence that the beneficiary has been admitted to the United States previously in H-2A status;

(C) The potential for abuse, fraud, or other harm to the integrity of the H-2A visa program through the potential admission of a beneficiary from a country not currently on the list; and

(D) Such other factors as may serve the U.S. interest.

(2) Once published, any designation of participating countries pursuant to paragraph (h)(5)(i)(F)(1)(i) of this section shall be effective for one year after the date of publication in the

FEDERAL REGISTER and shall be without effect at the end of that one-year period.

(ii) *Effect of the labor certification process.* The temporary agricultural labor certification process determines whether employment is as an agricultural worker, whether it is open to U.S. workers, if qualified U.S. workers are available, the adverse impact of employment of a qualified alien, and whether employment conditions, including housing, meet applicable requirements. In petition proceedings a petitioner must establish that the employment and beneficiary meet the requirements of paragraph (h)(5) of this section.

(iii) *Ability and intent to meet a job offer—(A) Eligibility requirements.* An H-2A petitioner must establish that each beneficiary will be employed in accordance with the terms and conditions of the certification, which includes that the principal duties to be performed are those on the certification, with other duties minor and incidental.

(B) *Intent and prior compliance.* Requirement intent cannot be established for two years after an employer or joint employer, or a parent, subsidiary or affiliate thereof, is found to have violated section 274(a) of the Act or to have employed an H-2A worker in a position other than that described in the relating petition.

(C) *Initial evidence.* Representations required for the purpose of labor certification are initial evidence of intent.

(iv) *Temporary and seasonal employment—(A) Eligibility requirements.* An H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

(B) *Effect of Department of Labor findings.* In temporary agricultural labor certification proceedings the Depart-

ment of Labor separately tests whether employment qualifies as temporary or seasonal. Its finding that employment qualifies is normally sufficient for the purpose of an H-2A petition. However, notwithstanding that finding, employment will be found not to be temporary or seasonal where an application for permanent labor certification has been filed for the same alien, or for another alien to be employed in the same position, by the same employer or by its parent, subsidiary or affiliate. This can only be overcome by the petitioner's demonstration that there will be at least a six month interruption of employment in the United States after H-2A status ends. Also, eligibility will not be found, notwithstanding the issuance of a temporary agricultural labor certification, where there is substantial evidence that the employment is not temporary or seasonal.

(v) *The beneficiary's qualifications—(A) Eligibility requirements.* An H-2A petitioner must establish that any named beneficiary met the stated minimum requirements and was fully able to perform the stated duties when the application for certification was filed. It must be established at time of application for an H-2A visa, or for admission if a visa is not required, that any unnamed beneficiary either met these requirements when the certification was applied for or passed any certified aptitude test at any time prior to visa issuance, or prior to admission if a visa is not required.

(B) *Evidence of employment/job training.* For petitions with named beneficiaries, a petition must be filed with evidence that the beneficiary met the certification's minimum employment and job training requirements, if any are prescribed, as of the date of the filing of the labor certification application. For petitions with unnamed beneficiaries, such evidence must be submitted at the time of a visa application or, if a visa is not required, at the time the applicant seeks admission to the United States. Evidence must be in the form of the past employer or employers' detailed statement(s) or actual employment documents, such as company payroll or tax records. Alternately, a petitioner must show that such evidence cannot be obtained, and submit

affidavits from persons who worked with the beneficiary that demonstrate the claimed employment or job training.

(C) *Evidence of education and other training.* For petitions with named beneficiaries, a petition must be filed with evidence that the beneficiary met all of the certification's post-secondary education and other formal training requirements, if any are prescribed in the labor certification application as of date of the filing of the labor certification application. For petitions with unnamed beneficiaries, such evidence must be submitted at the time of a visa application or, if a visa is not required, at the time the applicant seeks admission to the United States. Evidence must be in the form of documents, issued by the relevant institution(s) or organization(s), that show periods of attendance, majors and degrees or certificates accorded.

(vi) *Petitioner consent and notification requirements—(A) Consent.* In filing an H-2A petition, a petitioner and each employer consents to allow access to the site by DHS officers where the labor is being performed for the purpose of determining compliance with H-2A requirements.

(B) *Agreements.* The petitioner agrees to the following requirements:

(1) To notify DHS, within 2 workdays, and beginning on a date and in a manner specified in a notice published in the FEDERAL REGISTER if:

(i) An H-2A worker fails to report to work within 5 workdays of the employment start date on the H-2A petition or within 5 workdays of the start date established by his or her employer, whichever is later;

(ii) The agricultural labor or services for which H-2A workers were hired is completed more than 30 days earlier than the employment end date stated on the H-2A petition; or

(iii) The H-2A worker absconds from the worksite or is terminated prior to the completion of agricultural labor or services for which he or she was hired.

(2) To retain evidence of such notification and make it available for inspection by DHS officers for a 1-year period beginning on the date of the notification. To retain evidence of a different employment start date if it is

changed from that on the petition by the employer and make it available for inspection by DHS officers for the 1-year period beginning on the newly-established employment start date.

(3) To pay \$10 in liquidated damages for each instance where the employer cannot demonstrate that it has complied with the notification requirements, unless, in the case of an untimely notification, the employer demonstrates with such notification that good cause existed for the untimely notification, and DHS, in its discretion, waives the liquidated damages amount.

(C) *Process.* If DHS has determined that the petitioner has violated the notification requirements in paragraph (h)(5)(vi)(B)(1) of this section and has not received the required notification, the petitioner will be given written notice and 30 days to reply before being given written notice of the assessment of liquidated damages.

(D) *Failure to pay liquidated damages.* If liquidated damages are not paid within 10 days of assessment, an H-2A petition may not be processed for that petitioner or any joint employer shown on the petition until such damages are paid.

(E) *Abscondment.* An H-2A worker has absconded if he or she has not reported for work for a period of 5 consecutive workdays without the consent of the employer.

(vii) *Validity.* An approved H-2A petition is valid through the expiration of the relating certification for the purpose of allowing a beneficiary to seek issuance of an H-2A nonimmigrant visa, admission or an extension of stay for the purpose of engaging in the specific certified employment.

(viii) *Admission—*

(A) *Effect of violations of status.* An alien may not be accorded H-2A status who, at any time during the past 5 years, USCIS finds to have violated, other than through no fault of his or her own (e.g., due to an employer's illegal or inappropriate conduct), any of the terms or conditions of admission into the United States as an H-2A nonimmigrant, including remaining beyond the specific period of authorized stay or engaging in unauthorized employment.

(B) *Period of admission.* An alien admissible as an H-2A nonimmigrant shall be admitted for the period of the approved petition. Such alien will be admitted for an additional period of up to one week before the beginning of the approved period for the purpose of travel to the worksite, and a 30-day period following the expiration of the H-2A petition for the purpose of departure or to seek an extension based on a subsequent offer of employment. Unless authorized under 8 CFR 274a.12 or section 214(n) of the Act, the beneficiary may not work except during the validity period of the petition.

(C) *Limits on an individual's stay.* Except as provided in paragraph (h)(5)(viii)(B) of this section, an alien's stay as an H-2A nonimmigrant is limited by the term of an approved petition. An alien may remain longer to engage in other qualifying temporary agricultural employment by obtaining an extension of stay. However, an individual who has held H-2A status for a total of 3 years may not again be granted H-2A status until such time as he or she remains outside the United States for an uninterrupted period of 3 months. An absence from the United States can interrupt the accrual of time spent as an H-2A nonimmigrant against the 3-year limit. If the accumulated stay is 18 months or less, an absence is interruptive if it lasts for at least 45 days. If the accumulated stay is greater than 18 months, an absence is interruptive if it lasts for at least 2 months. Eligibility under paragraph (h)(5)(viii)(C) of this section will be determined in admission, change of status or extension proceedings. An alien found eligible for a shorter period of H-2A status than that indicated by the petition due to the application of this paragraph (h)(5)(viii)(C) of this section shall only be admitted for that abbreviated period.

(ix) *Substitution of beneficiaries after admission.* An H-2A petition may be filed to replace H-2A workers whose employment was terminated earlier than the end date stated on the H-2A petition and before the completion of work; who fail to report to work within five days of the employment start date on the H-2A petition or within five days of the start date established by

his or her employer, whichever is later; or who abscond from the worksite. The petition must be filed with a copy of the certification document, a copy of the approval notice covering the workers for which replacements are sought, and other evidence required by paragraph (h)(5)(i)(D) of this section. It must also be filed with a statement giving each terminated or absconded worker's name, date and country of birth, termination date, and the reason for termination, and the date that USCIS was notified that the alien was terminated or absconded, if applicable. A petition for a replacement will not be approved where the requirements of paragraph (h)(5)(vi) of this section have not been met. A petition for replacements does not constitute the notification required by paragraph (h)(5)(vi)(B)(I) of this section.

(x) *Extensions in emergent circumstances.* In emergent circumstances, as determined by USCIS, a single H-2A petition may be extended for a period not to exceed 2 weeks without an additional approved labor certification if filed on behalf of one or more beneficiaries who will continue to be employed by the same employer that previously obtained an approved petition on the beneficiary's behalf, so long as the employee continues to perform the same duties and will be employed for no longer than 2 weeks after the expiration of previously-approved H-2A petition. The previously approved H-2A petition must have been based on an approved temporary labor certification, which shall be considered to be extended upon the approval of the extension of H-2A status.

(xi) *Treatment of petitions and alien beneficiaries upon a determination that fees were collected from alien beneficiaries.* (A) *Denial or revocation of petition.* As a condition to approval of an H-2A petition, no job placement fee or other compensation (either direct or indirect) may be collected at any time, including before or after the filing or approval of the petition, from a beneficiary of an H-2A petition by a petitioner, agent, facilitator, recruiter, or similar employment service as a condition of H-2A employment (other than the lesser of the fair market value or actual costs of transportation and any

government-mandated passport, visa, or inspection fees, to the extent that the payment of such costs and fees by the beneficiary is not prohibited by statute or Department of Labor regulations, unless the employer agent, facilitator, recruiter, or employment service has agreed with the alien to pay such costs and fees).

(1) If USCIS determines that the petitioner has collected, or entered into an agreement to collect, such prohibited fee or compensation, the H-2A petition will be denied or revoked on notice unless the petitioner demonstrates that, prior to the filing of the petition, the petitioner has reimbursed the alien in full for such fees or compensation, or, where such fee or compensation has not yet been paid by the alien worker, that the agreement has been terminated.

(2) If USCIS determines that the petitioner knew or should have known at the time of filing the petition that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service such fees or compensation as a condition of obtaining the H-2A employment, the H-2A petition will be denied or revoked on notice unless the petitioner demonstrates that, prior to the filing of the petition, the petitioner or the facilitator, recruiter, or similar employment service has reimbursed the alien in full for such fees or compensation or, where such fee or compensation has not yet been paid by the alien worker, that the agreement has been terminated.

(3) If USCIS determines that the beneficiary paid the petitioner such fees or compensation as a condition of obtaining the H-2A employment after the filing of the H-2A petition, the petition will be denied or revoked on notice.

(4) If USCIS determines that the beneficiary paid or agreed to pay the agent, facilitator, recruiter, or similar employment service such fees or compensation as a condition of obtaining the H-2A employment after the filing of the H-2A petition and with the knowledge of the petitioner, the petition will be denied or revoked unless the petitioner demonstrates that the petitioner or facilitator, recruiter, or similar employment service has reimbursed the beneficiary in full or where

such fee or compensation has not yet been paid by the alien worker, that the agreement has been terminated, or notifies DHS within 2 workdays of obtaining knowledge in a manner specified in a notice published in the FEDERAL REGISTER.

(B) *Effect of petition revocation.* Upon revocation of an employer's H-2A petition based upon paragraph (h)(5)(xi)(A) of this section, the alien beneficiary's stay will be authorized and the alien will not accrue any period of unlawful presence under section 212(a)(9) of the Act (8 U.S.C. 1182(a)(9)) for a 30-day period following the date of the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment.

(C) *Reimbursement as condition to approval of future H-2A petitions.* (1) *Filing subsequent H-2A petitions within 1 year of denial or revocation of previous H-2A petition.* A petitioner filing an H-2A petition within 1 year after the decision denying or revoking on notice an H-2A petition filed by the same petitioner on the basis of paragraph (h)(5)(xi)(A) of this section must demonstrate to the satisfaction of USCIS, as a condition of approval of such petition, that the petitioner or agent, facilitator, recruiter, or similar employment service has reimbursed the beneficiary in full or that the petitioner has failed to locate the beneficiary. If the petitioner demonstrates to the satisfaction of USCIS that the beneficiary was reimbursed in full, such condition of approval shall be satisfied with respect to any subsequently filed H-2A petitions, except as provided in paragraph (h)(5)(xi)(C)(2). If the petitioner demonstrates to the satisfaction of USCIS that it has made reasonable efforts to locate the beneficiary with respect to each H-2A petition filed within 1 year after the decision denying or revoking the previous H-2A petition on the basis of paragraph (h)(5)(xi)(A) of this section but has failed to do so, such condition of approval shall be deemed satisfied with respect to any H-2A petition filed 1 year or more after the denial or revocation. Such reasonable efforts shall include contacting any of the beneficiary's known addresses.

(2) *Effect of subsequent denied or revoked petitions.* An H-2A petition filed

by the same petitioner subsequent to a denial under paragraph (h)(5)(xi)(A) of this section shall be subject to the condition of approval described in paragraph (h)(5)(xi)(C)(I) of this section, regardless of prior satisfaction of such condition of approval with respect to a previously denied or revoked petition.

(xii) *Treatment of alien beneficiaries upon revocation of labor certification.* The approval of an employer's H-2A petition is immediately and automatically revoked if the Department of Labor revokes the labor certification upon which the petition is based. Upon revocation of an H-2A petition based upon revocation of labor certification, the alien beneficiary's stay will be authorized and the alien will not accrue any period of unlawful presence under section 212(a)(9) of the Act for a 30-day period following the date of the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment.

(6) *Petition for alien to perform temporary nonagricultural services or labor (H-2B)—*

(i) *Petition.* (A) *H-2B nonagricultural temporary worker.* An H-2B nonagricultural temporary worker is an alien who is coming temporarily to the United States to perform temporary services or labor without displacing qualified United States workers available to perform such services or labor and whose employment is not adversely affecting the wages and working conditions of United States workers.

(B) *Denial or revocation of petition upon a determination that fees were collected from alien beneficiaries.* As a condition of approval of an H-2B petition, no job placement fee or other compensation (either direct or indirect) may be collected at any time, including before or after the filing or approval of the petition, from a beneficiary of an H-2B petition by a petitioner, agent, facilitator, recruiter, or similar employment service as a condition of an offer or condition of H-2B employment (other than the lower of the actual cost or fair market value of transportation to such employment and any government-mandated passport, visa, or inspection fees, to the extent that the passing of such costs to

the beneficiary is not prohibited by statute, unless the employer, agent, facilitator, recruiter, or similar employment service has agreed with the beneficiary that it will pay such costs and fees).

(1) If USCIS determines that the petitioner has collected or entered into an agreement to collect such fee or compensation, the H-2B petition will be denied or revoked on notice, unless the petitioner demonstrates that, prior to the filing of the petition, either the petitioner reimbursed the beneficiary in full for such fees or compensation or the agreement to collect such fee or compensation was terminated before the fee or compensation was paid by the beneficiary.

(2) If USCIS determines that the petitioner knew or should have known at the time of filing the petition that the beneficiary has paid or agreed to pay any agent, facilitator, recruiter, or similar employment service as a condition of an offer of the H-2B employment, the H-2B petition will be denied or revoked on notice unless the petitioner demonstrates that, prior to filing the petition, either the petitioner or the agent, facilitator, recruiter, or similar employment service reimbursed the beneficiary in full for such fees or compensation or the agreement to collect such fee or compensation was terminated before the fee or compensation was paid by the beneficiary.

(3) If USCIS determines that the beneficiary paid the petitioner such fees or compensation as a condition of an offer of H-2B employment after the filing of the H-2B petition, the petition will be denied or revoked on notice.

(4) If USCIS determines that the beneficiary paid or agreed to pay the agent, facilitator, recruiter, or similar employment service such fees or compensation after the filing of the H-2B petition and that the petitioner knew or had reason to know of the payment or agreement to pay, the petition will be denied or revoked unless the petitioner demonstrates that the petitioner or agent, facilitator, recruiter, or similar employment service reimbursed the beneficiary in full, that the parties terminated any agreement to pay before the beneficiary paid the fees or compensation, or that the petitioner

has notified DHS within 2 work days of obtaining knowledge, in a manner specified in a notice published in the FEDERAL REGISTER.

(C) *Effect of petition revocation.* Upon revocation of an employer's H-2B petition based upon paragraph (h)(6)(i)(B) of this section, the alien beneficiary's stay will be authorized and the beneficiary will not accrue any period of unlawful presence under section 212(a)(9) of the Act (8 U.S.C. 1182(a)(9)) for a 30-day period following the date of the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment. The employer shall be liable for the alien beneficiary's reasonable costs of return transportation to his or her last place of foreign residence abroad, unless such alien obtains an extension of stay based on an approved H-2B petition filed by a different employer.

(D) *Reimbursement as condition to approval of future H-2B petitions.* (1) *Filing subsequent H-2B petitions within 1 year of denial or revocation of previous H-2B petition.* A petitioner filing an H-2B petition within 1 year after a decision denying or revoking on notice an H-2B petition filed by the same petitioner on the basis of paragraph (h)(6)(i)(B) of this section must demonstrate to the satisfaction of USCIS, as a condition of the approval of the later petition, that the petitioner or agent, facilitator, recruiter, or similar employment service reimbursed in full each beneficiary of the denied or revoked petition from whom a prohibited fee was collected or that the petitioner has failed to locate each such beneficiary despite the petitioner's reasonable efforts to locate them. If the petitioner demonstrates to the satisfaction of USCIS that each such beneficiary was reimbursed in full, such condition of approval shall be satisfied with respect to any subsequently filed H-2B petitions, except as provided in paragraph (h)(6)(i)(D)(2) of this section. If the petitioner demonstrates to the satisfaction of USCIS that it has made reasonable efforts to locate but has failed to locate each such beneficiary within 1 year after the decision denying or revoking the previous H-2B petition on the basis of paragraph (h)(6)(i)(B) of this section, such condition of approval shall be

deemed satisfied with respect to any H-2B petition filed 1 year or more after the denial or revocation. Such reasonable efforts shall include contacting all of each such beneficiary's known addresses.

(2) *Effect of subsequent denied or revoked petitions.* An H-2B petition filed by the same petitioner subsequent to a denial under paragraph (h)(6)(i)(B) of this section shall be subject to the condition of approval described in paragraph (h)(6)(i)(D)(1) of this section, regardless of prior satisfaction of such condition of approval with respect to a previously denied or revoked petition.

(E) *Eligible countries.* (1) H-2B petitions may be approved for nationals of countries that the Secretary of Homeland Security has designated as participating countries, with the concurrence of the Secretary of State, in a notice published in the FEDERAL REGISTER, taking into account factors, including but not limited to:

(i) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals and residents of that country who are subject to a final order of removal;

(ii) The number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country;

(iii) The number of orders of removal executed against citizens, subjects, nationals and residents of that country; and

(iv) Such other factors as may serve the U.S. interest.

(2) A national from a country not on the list described in paragraph (h)(6)(i)(E)(1) of this section may be a beneficiary of an approved H-2B petition upon the request of a petitioner or potential H-2B petitioner, if the Secretary of Homeland Security, in his sole and unreviewable discretion, determines that it is in the U.S. interest for that alien to be a beneficiary of such petition. Determination of such a U.S. interest will take into account factors, including but not limited to:

(i) Evidence from the petitioner demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the list described in paragraph (h)(6)(i)(E)(1) of this section;

(ii) Evidence that the beneficiary has been admitted to the United States previously in H-2B status;

(iii) The potential for abuse, fraud, or other harm to the integrity of the H-2B visa program through the potential admission of a beneficiary from a country not currently on the list; and

(iv) Such other factors as may serve the U.S. interest.

(3) Once published, any designation of participating countries pursuant to paragraph (h)(6)(i)(E)(I) of this section shall be effective for one year after the date of publication in the FEDERAL REGISTER and shall be without effect at the end of that one-year period.

(F) *Petitioner agreements and notification requirements.* (1) *Agreements.* The petitioner agrees to notify DHS, within 2 work days, and beginning on a date and in a manner specified in a notice published in the FEDERAL REGISTER if: An H-2B worker fails to report for work within 5 work days after the employment start date stated on the petition; the nonagricultural labor or services for which H-2B workers were hired were completed more than 30 days early; or an H-2B worker absconds from the worksite or is terminated prior to the completion of the non-agricultural labor or services for which he or she was hired. The petitioner also agrees to retain evidence of such notification and make it available for inspection by DHS officers for a one-year period beginning on the date of the notification.

(2) *Abscondment.* An H-2B worker has absconded if he or she has not reported for work for a period of 5 consecutive work days without the consent of the employer.

(ii) *Temporary services or labor—(A) Definition.* Temporary services or labor under the H-2B classification refers to any job in which the petitioner's need for the duties to be performed by the employee(s) is temporary, whether or not the underlying job can be described as permanent or temporary.

(B) *Nature of petitioner's need.* Employment is of a temporary nature when the employer needs a worker for a limited period of time. The employer must establish that the need for the employee will end in the near, definable future. Generally, that period of

time will be limited to one year or less, but in the case of a one-time event could last up to 3 years. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.

(1) *One-time occurrence.* The petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

(2) *Seasonal need.* The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

(3) *Peakload need.* The petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

(4) *Intermittent need.* The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods.

(iii) *Procedures.* (A) Prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the petitioning employer shall apply for a temporary labor certification with the

Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

(B) An H-2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent. For purposes of paragraph (h) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an H-2B nonimmigrant but must use the services of a United States agent to file a petition for an H-2B nonimmigrant. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a favorable labor certification determination as required by paragraph (h)(6)(iv) or (h)(6)(v) of this section.

(D) The Governor of Guam shall separately establish procedures for administering the temporary labor program under his or her jurisdiction. The Secretary of Labor shall separately establish for the temporary labor program under his or her jurisdiction, by regulation at 20 CFR 655, procedures for administering that temporary labor program under his or her jurisdiction, and shall determine the prevailing wage applicable to an application for temporary labor certification for that temporary labor program in accordance

with the Secretary of Labor's regulation at 20 CFR 655.10.

(E) After obtaining a favorable determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on I-129, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction in the area of intended employment.

(iv) *Labor certifications, except Guam—*

(A) *Secretary of Labor's determination.*

An H-2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by an approved temporary labor certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers.

(B) *Validity of the labor certification.*

The Secretary of Labor may issue a temporary labor certification for a period of up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certifications filed under section 101(a)(15)(H)(ii)(b) of the Act for employment in the United States Virgin Islands may be approved only for entertainers and athletes and only for periods not to exceed 45 days.

(D) *Employment start date.* Beginning with petitions filed for workers for fiscal year 2010, an H-2B petition must state an employment start date that is the same as the date of need stated on the approved temporary labor certification. A petitioner filing an amended H-2B petition due to the unavailability of originally requested workers may state an employment start date later than the date of need stated on the previously approved temporary labor certification accompanying the amended H-2B petition.

(v) *Labor certification for Guam—*

(A) *Governor of Guam's determination.*

An H-2B petition for temporary employment on Guam shall be accompanied by an approved temporary labor certification issued by the Governor of Guam stating that qualified workers in the United States are not available to perform the required services, and that

Department of Homeland Security

§214.2

the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam.

(B) *Validity of labor certification.* The Governor of Guam may issue a temporary labor certification for a period up to one year.

(C)–(D) [Reserved]

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall, in consultation with the Service, establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(1) *Prevailing wage and working conditions.* The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the system includes utilization of advisory opinions and consultations, the opinions must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(2) *Availability of United States workers.* The system for determining availability of qualified United States workers must require the prospective employer to:

(i) Advertise the availability of the position for a minimum of three consecutive days in the newspaper with the largest daily circulation on Guam;

(ii) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications from the armed forces of the United States and those in the entertainment industry, the 30-day period may be reduced by the Governor to 10 days;

(iii) Conduct appropriate recruitment in other areas of the United States and its territories if sufficient qualified

United States construction workers are not available on Guam to fill a job. The Governor of Guam may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(iv) Report to the appropriate agency the names of all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(v) Offer all special considerations, such as housing and transportation expenses, to all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(vi) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor; and

(vii) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam—(1) Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this section, the Commissioner shall publish them as a notice in the FEDERAL REGISTER and the Governor shall publish them as a public record in Guam.

(2) *Approval of construction wage rates.* The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical

data on temporary labor certification workload and determinations. This information shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam—(1) General.* A temporary labor certification issued by the Governor of Guam may be invalidated by a director if it is determined by the director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the director determines that the certification involved gross error.

(2) *Notice of intent to invalidate.* If the director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 30 days in which to file a written response in rebuttal to the notice of intent. The director shall consider all evidence submitted upon rebuttal in reaching a decision.

(3) *Appeal of invalidation.* An employer may appeal the invalidation of a temporary labor certification in accordance with part 103 of this chapter.

(vi) *Evidence for H-2B petitions.* An H-2B petition shall be accompanied by:

(A) *Labor certification.* An approved temporary labor certification issued by the Secretary of Labor or the Governor of Guam, as appropriate;

(B) [Reserved]

(C) *Alien's qualifications.* In petitions where the temporary labor certification application requires certain education, training, experience, or special requirements of the beneficiary who is present in the United States, documentation that the alien qualifies for the job offer as specified in the application for such temporary labor certification. This requirement also applies to the named beneficiary who is abroad on the basis of special provisions stated in paragraph (h)(2)(iii) of this section;

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or

intermittent. If the need is seasonal, peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent; or

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad, if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term “abroad” means the alien’s last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for the alien obtaining or continuing H-2B status.

(vii) *Traded professional H-2B athletes.* In the case of a professional H-2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the player’s acquisition by the new organization, within which time the new organization is expected to file a new Form I-129 for H-2B non-immigrant classification. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid H-2B status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(viii) *Substitution of beneficiaries.* Beneficiaries of H-2B petitions that are approved for named or unnamed beneficiaries who have not been admitted may be substituted only if the employer can demonstrate that the total number of beneficiaries will not exceed the number of beneficiaries certified in

the original temporary labor certification. Beneficiaries who were admitted to the United States may not be substituted without a new petition accompanied by a newly approved temporary labor certification.

(A) To substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are outside of the United States, the petitioner shall, by letter and a copy of the petition approval notice, notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission. The petitioner shall also submit evidence of the qualifications of beneficiaries to the consular office or port of entry prior to issuance of a visa or admission, if applicable.

(B) To substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are currently in the United States, the petitioner shall file an amended petition with fees at the USCIS Service Center where the original petition was filed, with a copy of the original petition approval notice, a statement explaining why the substitution is necessary, evidence of the qualifications of beneficiaries, if applicable, evidence of the beneficiaries' current status in the United States, and evidence that the number of beneficiaries will not exceed the number allocated on the approved temporary labor certification, such as employment records or other documentary evidence to establish that the number of visas sought in the amended petition were not already issued. The amended petition must retain a period of employment within the same half of the same fiscal year as the original petition. Otherwise, a new temporary labor certification issued by DOL or the Governor of Guam and subsequent H-2B petition are required.

(ix) *Enforcement.* The Secretary of Labor may investigate employers to enforce compliance with the conditions of a petition and Department of Labor-approved temporary labor certification to admit or otherwise provide status to an H-2B worker.

(7) *Petition for alien trainee or participant in a special education exchange vis-*

itor program (H-3)—(i) Alien trainee. The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H-3 classification for a nurse who is not H-1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(1) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada; and

(2) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence required for petition involving alien trainee—(A) Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which

§214.2

8 CFR Ch. I (1–1–16 Edition)

citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and suffi-

ciently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(iv) *Petition for participant in a special education exchange visitor program—(A) General Requirements.* (1) The H-3 participant in a special education training program must be coming to the United States to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) The petition must be filed by a facility which has professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the special education exchange visitor program.

(3) The requirements in this section for alien trainees shall not apply to petitions for participants in a special education exchange visitor program.

(B) *Evidence.* An H-3 petition for a participant in a special education exchange visitor program shall be accompanied by:

(1) A description of the training program and the facility's professional staff and details of the alien's participation in the training program (any custodial care of children must be incidental to the training), and

(2) Evidence that the alien participant is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

(8) *Numerical limits—(i) Limits on affected categories.* During each fiscal year, the total number of aliens who can be provided nonimmigrant classification is limited as follows:

(A) Aliens classified as H-1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed the limits identified in section 214(g)(1)(A) of the Act.

(B) Aliens classified as H-1B non-immigrants to work for DOD research and development projects or coproduction projects may not exceed 100 at any time.

(C) Aliens classified as H-2B non-immigrants may not exceed 66,000.

(D) Aliens classified as H-3 non-immigrant participants in a special education exchange visitor program may not exceed 50.

(E) Aliens classified as H-1C non-immigrants may not exceed 500 in a fiscal year.

(ii) *Procedures.* (A) Each alien issued a visa or otherwise provided non-immigrant status under sections 101(a)(15)(H)(i)(b), 101(a)(15)(H)(i)(c), or 101(a)(15)(H)(ii) of the Act shall be counted for purposes of any applicable numerical limit, unless otherwise exempt from such numerical limit. Requests for petition extension or extension of an alien's stay shall not be counted for the purpose of the numerical limit. The spouse and children of principal H aliens are classified as H-4 nonimmigrants and shall not be counted against numerical limits applicable to principals.

(B) When calculating the numerical limitations or the number of exemptions under section 214(g)(5)(C) of the Act for a given fiscal year, USCIS will make numbers available to petitions in the order in which the petitions are filed. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions (including the number of beneficiaries requested when necessary) received and will notify the public of the date that USCIS has received the necessary number of petitions (the "final receipt date"). The day the news is published will not control the final receipt date. When necessary to ensure the fair and orderly allocation of numbers in a particular classification subject to a numerical limitation or the exemption under section 214(g)(5)(C) of the Act, USCIS may randomly select from among the petitions received on the final receipt date the remaining number of petitions deemed necessary

to generate the numerical limit of approvals. This random selection will be made via computer-generated selection as validated by the Office of Immigration Statistics. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt date will be rejected. Petitions filed on behalf of aliens otherwise eligible for the exemption under section 214(g)(5)(C) of the Act not randomly selected or that were received after the final receipt date will be rejected if the numerical limitation under 214(g)(1) of the Act has been reached for that fiscal year. Petitions indicating that they are exempt from the numerical limitation but that are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied and filing fees will not be returned or refunded. If the final receipt date is any of the first five business days on which petitions subject to the applicable numerical limit may be received (*i.e.*, if the numerical limit is reached on any one of the first five business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those five business days, conducting the random selection among the petitions subject to the exemption under section 214(g)(5)(C) of the Act first.

(C) When an approved petition is not used because the beneficiary(ies) does not apply for admission to the United States, the petitioner shall notify the Service Center Director who approved the petition that the number(s) has not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and USCIS will take into account the unused number during the appropriate fiscal year.

(D) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year. Petitions received after the total numbers available in a fiscal year are used stating that the alien beneficiaries are exempt from the numerical limitation will be denied and filing fees will not be returned or refunded if

USCIS later determines that such beneficiaries are subject to the numerical limitation.

(E) The 500 H-1C nonimmigrant visas issued each fiscal year shall be allocated in the following manner:

(1) For each fiscal year, the number of visas issued to the states of California, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas shall not exceed 50 each (except as provided for in paragraph (h)(8)(ii)(F)(3) of this section).

(2) For each fiscal year, the number of visas issued to the states not listed in paragraph (h)(8)(ii)(F)(1) of this section shall not exceed 25 each (except as provided for in paragraph (h)(8)(ii)(F)(3) of this section).

(3) If the total number of visas available during the first three quarters of a fiscal year exceeds the number of approvable H-1C petitions during those quarters, visas may be issued during the last quarter of the fiscal year to nurses who will be working in a state whose cap has already been reached for that fiscal year.

(4) When an approved H-1C petition is not used because the alien(s) does not obtain H-1C classification, e.g., the alien is never admitted to the United States, or the alien never worked for the facility, the facility must notify the Service according to the instructions contained in paragraph (h)(11)(ii) of this section. The Service will subtract H-1C petitions approved in the current fiscal year that are later revoked from the total count of approved H-1C petitions, provided that the alien never commenced employment with the facility.

(5) If the number of alien nurses included in an H-1C petition exceeds the number available for the remainder of a fiscal year, the Service shall approve the petition for the beneficiaries to the allowable amount in the order that they are listed on the petition. The remaining beneficiaries will be considered for approval in the subsequent fiscal year.

(6) Once the 500 cap has been reached, the Service will reject any new petitions subsequently filed requesting a work start date prior to the first day of the next fiscal year.

(9) *Approval and validity of petition—*

(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval shall be as follows:

(A) The approval notice shall include the beneficiary's(ies') name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in whole or in part. The approval notice shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be filed or approved earlier than 6 months before the date of actual need for the beneficiary's services or training, except that an H-2B petition for a temporary nonagricultural worker may not be filed or approved more than 120 days before the date of the actual need for the beneficiary's temporary nonagricultural services that is identified on the temporary labor certification.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new H petition is approved before the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(C) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(9)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The initial approval period of an H petition shall conform to the limits prescribed as follows:

(A)(1) *H-1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years but may not exceed the validity period of the labor condition application.

(2) *H-1B petition involving a DOD research and development or coproduction project.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien involved in a DOD research and development project or a coproduction project shall be valid for a period of up to five years.

(3) *H-1B petition involving an alien of distinguished merit and ability in the field of fashion modeling.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien of distinguished merit and ability in the field of fashion modeling shall be valid for a period of up to three years.

(B) *H-2B petition.* The approval of the petition to accord an alien a classification under section 101(a)(15)(H)(ii)(b) of the Act shall be valid for the period of the approved temporary labor certification.

(C)(1) *H-3 petition for alien trainee.* An approved petition for an alien trainee classified under section 101(a)(15)(H)(iii) of the Act shall be valid for a period of up to two years.

(2) *H-3 petition for alien participant in a special education training program.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act as a participant in a special education exchange visitor program shall be valid for a period of up to 18 months.

(D) *H-1C petition for a registered nurse.* An approved petition for an alien classified under section 101(a)(15)(H)(i)(c) of the Act shall be valid for a period of 3 years.

(iv) *H-4 dependents.* The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, may be admitted, if otherwise admissible, as H-4 nonimmigrants for the same period of admission or extension as the principal spouse or parent.

H-4 nonimmigrant status does not confer eligibility for employment authorization incident to status. An H-4 nonimmigrant spouse of an H-1B nonimmigrant may be eligible for employment authorization only if the H-1B nonimmigrant is the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or the H-1B nonimmigrant's period of stay in H-1B status is authorized in the United States under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106-313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273 (2002). To request employment authorization, an eligible H-4 nonimmigrant spouse must file an Application for Employment Authorization, or a successor form, in accordance with 8 CFR 274a.13 and the form instructions. If such Application for Employment Authorization is filed concurrently with another related benefit request(s), in accordance with and as permitted by form instructions, the 90-day period described in 8 CFR 274.13(d) will commence on the latest date that a concurrently filed related benefit request is approved. An Application for Employment Authorization must be accompanied by documentary evidence establishing eligibility, including evidence of the spousal relationship and that the principal H-1B is the beneficiary of an approved Immigrant Petition for Alien Worker or has been provided H-1B status under sections 106(a) and (b) of AC21, as amended by the 21st Century Department of Justice Appropriations Authorization Act, the H-1B beneficiary is currently in H-1B status, and the H-4 nonimmigrant spouse is currently in H-4 status.

(10) *Denial of petition*—(i) *Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial and of the right to appeal the denial of the petition under 8 CFR part 103. The petition will be denied if it is determined that the statements on the petition were inaccurate, fraudulent, or misrepresented a material fact.

There is no appeal from a decision to deny an extension of stay to the alien.

(11) *Revocation of approval of petition*—(i) *General*. (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition. However, H-2A and H-2B petitioners must send notification to DHS pursuant to paragraphs (h)(5)(vi) and (h)(6)(i)(F) of this section respectively.

(B) The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Immediate and automatic revocation*. The approval of any petition is immediately and automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or the Department of Labor revokes the labor certification upon which the petition is based.

(iii) *Revocation on notice*—(A) *Grounds for revocation*. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

(2) The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or

(3) The petitioner violated terms and conditions of the approved petition; or

(4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision*. The notice of intent to revoke shall contain a detailed statement of the grounds for the

revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(12) *Appeal of a denial or a revocation of a petition*—(i) *Denial*. A petition denied in whole or in part may be appealed under part 103 of this chapter.

(ii) *Revocation*. A petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(13) *Admission*—(i) *General*. (A) A beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(B) When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15)(H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. A certain period of absence from the United States of H-2A and H-2B aliens can interrupt the accrual of time spent in such status against the 3-year limit set forth in 8 CFR 214.2(h)(13)(iv). The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to reside abroad.

(ii) *H-1C limitation on admission*. The maximum period of admission for an H-1C nonimmigrant alien is 3 years.

The maximum period of admission for an H-1C alien begins on the date the H-1C alien is admitted to the United States and ends on the third anniversary of the alien's admission date. Periods of time spent out of the United States for business or personal reasons during the validity period of the H-1C petition count towards the alien's maximum period of admission. When an H-1C alien has reached the 3-year maximum period of admission, the H-1C alien is no longer eligible for admission to the United States as an H-1C nonimmigrant alien.

(iii) *H-1B limitation on admission.* (A) *Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An H-1B alien in a specialty occupation or an alien of distinguished merit and ability who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(B) *Alien involved in a DOD research and development or coproduction project.* An H-1B alien involved in a DOD research and development or coproduction project who has spent 10 years in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) or (L) of the Act to perform services involving a DOD research and development project or coproduction project. A new petition or change of status under section 101(a)(15) (H) or (L) of the Act may not be approved for such an alien unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(iv) *H-2B and H-3 limitation on admission.* An H-2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under sections 101(a)(15)(H) and/or (L)

of the Act unless the alien has resided and been physically present outside the United States for the immediately preceding 3 months. An H-3 alien participant in a special education program who has spent 18 months in the United States under sections 101(a)(15)(H) and/or (L) of the Act; and an H-3 alien trainee who has spent 24 months in the United States under sections 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under sections 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

(v) *Exceptions.* The limitations in paragraphs (h)(13)(iii) through (h)(13)(iv) of this section shall not apply to H-1B, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of 6 months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. An absence from the United States can interrupt the accrual of time spent as an H-2B nonimmigrant against the 3-year limit. If the accumulated stay is 18 months or less, an absence is interruptive if it lasts for at least 45 days. If the accumulated stay is greater than 18 months, an absence is interruptive if it lasts for at least two months. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(14) *Extension of visa petition validity.* The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not required unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired.

(15) *Extension of stay*—(i) *General*. The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa. When the total period of stay in an H classification has been reached, no further extensions may be granted.

(ii) *Extension periods*—(A) *H-1C extension of stay*. The maximum period of admission for an H-1C alien is 3 years. An H-1C alien who was initially admitted to the United States for less than 3 years may receive an extension of stay up to the third anniversary date of his or her initial admission. An H-1C nonimmigrant may not receive an extension of stay beyond the third anniversary date of his or her initial admission to the United States.

(B) *H-1B extension of stay*—(1) *Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling*. An extension of stay may be authorized for a period of up to three years for a beneficiary of an H-1B petition in a specialty occupation or an alien of distinguished merit and ability. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation.

(2) *Alien in a DOD research and development or coproduction project*. An extension of stay may be authorized for a period up to five years for the beneficiary of an H-1B petition involving a DOD research and development project or coproduction project. The total period of stay may not exceed 10 years.

(C) *H-2A or H-2B extension of stay*. An extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H-2A or H-2B worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(D) *H-3 extension of stay*. An extension of stay may be authorized for the length of the training program for a total period of stay as an H-3 trainee not to exceed two years, or for a total period of stay as a participant in a special education training program not to exceed 18 months.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification*—(i) *H-1B or H-1C classification*. The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an H-1C or H-1B petition or a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an H-1C or H-1B nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(ii) *H-2A, H-2B, and H-3 classification*. The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by or in a training position with the same petitioner, shall be a reason, by itself, to deny the alien's extension of stay.

(17) *Effect of a strike*—(i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of

workers is in progress in the occupation and at the place where the beneficiary is to be employed or trained, and that the employment of training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied.

(B) If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced the employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (h)(17)(i), the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other H nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by an H nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who

remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(18) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on Form I-797 whenever a visa petition, an extension of a visa petition, or an alien's extension of stay is approved under the H classification. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use a copy of Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(19) *Additional fee for filing certain H-1B petitions.* (i) A United States employer (other than an exempt employer as defined in paragraph (h)(19)(iii) of this section) who files a Form I-129, on or after December 1, 1998, and before October 1, 2001, must include the additional fee required in §103.7(b)(1) of this chapter, if the petition is filed for any of the following purposes:

(A) An initial grant of H-1B status under section 101(a)(15)(H)(i)(b) of the Act;

(B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or

(C) Authorization for a change in employers, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) A petitioner must submit the \$110 filing fee and additional \$500 filing fee in a single remittance totaling \$610. Payment of the \$610 sum (\$110 filing fee and additional \$500 filing fee) must be made at the same time to constitute a single remittance. A petitioner may submit two checks, one in the amount of \$500 and the other in the amount of \$110. The Service will accept remittances of the \$500 fee only from the United States employer or its representative of record, as defined under 8 CFR part 292 and 8 CFR 103.2(a).

§214.2

8 CFR Ch. I (1–1–16 Edition)

(iii) The following exempt organizations are not required to pay the additional fee:

(A) *An institution of higher education*, as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity*. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(C) *A nonprofit research organization or governmental research organization*. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

(iv) *Non-profit or tax exempt organizations*. For purposes of paragraphs (h)(19)(iii) (B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

(v) *Filing situations where the \$500 filing fee is not required*. The \$500 filing fee is not required:

(A) If the petition is an amended H-1B petition that does not contain any requests for an extension of stay;

(B) If the petition is an H-1B petition filed for the sole purpose of correcting a Service error; or

(C) If the petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the \$500 filing fee was paid on the initial petition or the first extension of stay.

(vi) *Petitioners required to file Form I-129W*. All petitioners must submit Form I-129W with the appropriate supporting documentation with the petition for an H-1B nonimmigrant alien. Petitioners who do not qualify for a fee exemption are required only to fill out Part A of Form I-129W.

(vii) *Evidence to be submitted in support of the Form I-129W*. (A) Employer claiming to be exempt. An employer claiming to be exempt from the \$500 filing fee must complete both Parts A and B of Form I-129W along with Form I-129. The employer must also submit evidence as described on Form I-129W establishing that it meets one of the exemptions described at paragraph (h)(19)(iii) of this section. A United States employer claiming an exemption from the \$500 filing fee on the basis that it is a non-profit research organization must submit evidence that it has tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6). All other employers claiming an exemption must submit a statement describing why the organization or entity is exempt.

(B) Exempt filing situations. Any non-exempt employer who claims that the \$500 filing fee does not apply with respect to a particular filing for one of the reasons described in §214.2(h)(19)(v), must submit a statement describing why the filing fee is not required.

(i) *Representatives of information media*. The admission of an alien of the

class defined in section 101(a)(15)(I) of the Act constitutes an agreement by the alien not to change the information medium or his or her employer until he or she obtains permission to do so from the district director having jurisdiction over his or her residence. An alien classified as an information media nonimmigrant (I) may be authorized admission for the duration of employment.

(j) *Exchange aliens*—(1) *General*—(i) *Eligibility for admission*. A non-immigrant exchange visitor and his or her accompanying spouse and minor children may be admitted into the United States in J-1 and J-2 classifications under section 101(a)(15)(J) of the Act, if the exchange visitor and his or her accompanying spouse and children each presents a SEVIS Form DS-2019 issued in his or her own name by a program approved by the Department of State for participation by J-1 exchange visitors. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS-2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS-2019. However, where the exchange visitor presents a properly completed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, which was issued to the J-1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J-1's non-SEVIS Form DS-2019.

(ii) *Admission period*. An exchange alien, and J-2 spouse and children, may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS-2019. The initial admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS-2019, plus a period of 30 days for the purposes of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the Department of State published at 22 CFR part 62 give general limitations on the stay of the various classes of exchange visi-

tors. A spouse or child may not be admitted for longer than the principal exchange visitor.

(iii) *Readmission*. An exchange alien may be readmitted to the United States for the remainder of the time authorized on Form I-94, without presenting Form IAP-66, if the alien is returning from a visit solely to foreign contiguous territory or adjacent islands after an absence of less than 30 days and if the original Form I-94 is presented. All other exchange aliens must present a valid Form IAP-66. An original Form IAP-66 or copy three (the pink copy) of a previously issued form presented by an exchange alien returning from a temporary absence shall be retained by the exchange alien for re-entries during the balance of the alien's stay.

(iv) *Extensions of Stay*. If an exchange alien requires an extension beyond the initial admission period, the alien shall apply by submitting a new Form DS-2019 which indicates the date to which the alien's program is extended. The extension may not exceed the period specified on Form DS-2019, plus a period of 30 days for the purpose of travel. Extensions of stay for the alien's spouse and children require, as an attachment to Form DS-2019, Form I-94 for each dependent, and a list containing the names of the applicants, dates and places of birth, passport numbers, issuing countries, and expiration dates. An accompanying spouse or child may not be granted an extension of stay for longer than the principal exchange alien.

(v) *Employment*. (A) The accompanying spouse and minor children of a J-1 exchange visitor may accept employment only with authorization by the Immigration and Naturalization Service. A request for employment authorization must be made on Form I-765, Application for Employment Authorization, with fee, as required by the Service, to the district director having jurisdiction over the J-1 exchange visitor's temporary residence in the United States. Income from the spouse's or dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be

authorized if this income is needed to support the J–1 principal alien.

(B) J–2 employment may be authorized for the duration of the J–1 principal alien’s authorized stay as indicated on Form I–94 or a period of four years, whichever is shorter. The employment authorization is valid only if the J–1 is maintaining status. Where a J–2 spouse or dependent child has filed a timely application for extension of stay, only upon approval of the request for extension of stay may he or she apply for a renewal of the employment authorization on a Form I–765 with the required fee.

(vi) *Extension of duration of status.* The Commissioner may, by notice in the FEDERAL REGISTER, at any time she determines that the H–1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H–1B application, the duration of status of any J–1 alien on behalf of whom an employer has timely filed an application for change of status to H–1B. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and is not subject to the 2-year foreign residence requirement at 212(e) of the Act. Any J–1 student whose duration of status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J–2 dependent aliens.

(vii) *Use of SEVIS.* At a date to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for designated program sponsors. After that date, which will be announced by publication in the FEDERAL REGISTER, all designated program sponsors must begin issuance of the SEVIS Form DS–2019.

(viii) *Current name and address.* A J–1 exchange visitor must inform the Service and the responsible officer of the exchange visitor program of any legal

changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the program sponsor. A J–1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the responsible officer, who in turn shall enter the information in SEVIS within 21 days of notification by the exchange visitor. A J–1 exchange visitor enrolled at a non-SEVIS program must submit a change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of an exchange visitor who cannot receive mail where he or she resides, the address provided by the exchange visitor must be the actual physical location where the exchange visitor resides rather than a mailing address. In cases where an exchange visitor provides a mailing address, the exchange visitor program must maintain a record of, and must provide upon request from the Service, the actual physical location where the exchange visitor resides.

(2) *Special reporting requirement.* Each exchange alien participating in a program of graduate medical education or training shall file Form I–644 (Supplementary Statement for Graduate Medical Trainees) annually with the Service attesting to the conditions as specified on the form. The exchange alien shall also submit Form I–644 as an attachment to a completed Form DS–2019 when applying for an extension of stay.

(3) *Alien in cancelled programs.* When the approval of an exchange visitor program is withdrawn by the Director of the United States Information Agency, the district director shall send a notice of the withdrawal to each participant in the program and a copy of each such notice shall be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay

may be obtained if the participant is accepted in another approved program and a Form DS-2019, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required.

(4) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training*—(i) *Requirements*. Any alien coming to the United States as an exchange visitor to participate in a program under which the alien will receive graduate medical education or training, or any alien seeking to change nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts of I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), and must be competent in oral and written English, and shall submit a completely executed and valid Form DS-2019.

(ii) *Exemptions*. From January 10, 1978 until December 31, 1983, any alien who has come to or seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or any alien who seeks to change nonimmigrant status for that purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) and (B)(ii)(I) of section 212(j)(1) of the Act if a substantial disruption in the health services provided by such program would result from not permitting the alien to participate in the program: *Provided* that the exemption will not increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1978.

(5) *Remittance of the fee*. An alien who applies for J-1 nonimmigrant status in order to commence participation in a Department of State-designated exchange visitor program is required to pay the SEVIS fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

(k) *Spouses, Fiancées, and Fiancés of United States Citizens*—(1) *Petition and*

supporting documents. To be classified as a fiancé or fiancée as defined in section 101(a)(15)(K)(i) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I-129F. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and K-1 beneficiary have met*. The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person.

(3) *Children of beneficiary*. Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the

§214.2

8 CFR Ch. I (1–1–16 Edition)

Act) may be accorded the same non-immigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and K-1 beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from non-immigrant to immigrant.*

(i) [Reserved]

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K-1 visa issued on or after November 10, 1986, the K-1 beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

(7) *Eligibility, petition and supporting documents for K-3/K-4 classification.* To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(K)(iii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 non-immigrant visa filed on Form I-129F.

(8) *Period of admission for K3/K-4 status.* Aliens entering the United States as a K-3 shall be admitted for a period of 2 years. Aliens entering the United States as a K-4 shall be admitted for a period of 2 years or until that alien's 21st birthday, whichever is shorter.

(9) *Employment authorization.* An alien admitted to the United States as a nonimmigrant under section 101(a)(15)(K) of the Act shall be authorized to work incident to status for the period of authorized stay. K-1/K-2 aliens seeking work authorization must apply, with fee, to the Service for work authorization pursuant to §274a.12(a)(6) of this chapter. K-3/K-4 aliens must apply to the Service for a document evidencing employment authorization pursuant to §274a.12(a)(9) of this chapter. Employment authorization documents issued to K-3/K-4 aliens may be renewed only upon a showing that the applicant has an application or petition awaiting approval, equivalent to the showing required for an extension of stay pursuant to §214.2(k)(10).

(10) *Extension of stay for K-3/K-4 status—(i) General.* A K-3/K-4 alien may apply for extension of stay, on Form I-539, Application to Extend/Change Non-immigrant Status, 120 days prior to the expiration of his or her authorized stay. Extensions for K-4 status must be filed concurrently with the alien's parent's K-3 status extension application. In addition, the citizen parent of a K-4 alien filing for extension of K status should file Form I-130 on their behalf. Extension will be granted in 2-year intervals upon a showing of eligibility pursuant to section 101(a)(15)(K)(ii) or (iii) of the Act. Aliens wishing to extend their period of stay as a K-3 or K-4 alien pursuant to §214.1(c)(2) must show that one of the following has been filed with the Service or the Department of State, as applicable, and is awaiting approval:

(A) The Form I-130, Petition for Alien Relative, filed by the K-3's U.S. citizen spouse who filed the Form I-129F;

(B) An application for an immigrant visa based on a Form I-130 described in §214.2(K)(10)(i);

(C) A Form I-485, Application for Adjustment to that of Permanent Residence, based on a Form I-130 described in § 214.2(k)(10)(i);

(ii) “*Good Cause*” showing. Aliens may file for an extension of stay as a K-3/K-4 nonimmigrant after a Form I-130 filed on their behalf has been approved, without filing either an application for adjustment of status or an immigrant visa upon a showing of “good cause.” A showing of “good cause” may include an illness, a job loss, or some other catastrophic event that has prevented the filing of an adjustment of status application by the K-3/K-4 alien. The event or events must have taken place since the alien entered the United States as a K-3/K-4 nonimmigrant. The burden of establishing “good cause” rests solely with the applicant. Whether the applicant has shown “good cause” is a purely discretionary decision by the Service from which there is no appeal.

(1) *Termination of K-3/K-4 status.* The status of an alien admitted to the United States as a K-3/K-4 under section 101(a)(15)(K)(ii) or (iii) of the Act, shall be automatically terminated 30 days following the occurrence of any of the following:

(i) The denial or revocation of the Form I-130 filed on behalf of that alien;

(ii) The denial or revocation of the immigrant visa application filed by that alien;

(iii) The denial or revocation of the alien’s application for adjustment of status to that of lawful permanent residence;

(iv) The K-3 spouse’s divorce from the U.S. citizen becomes final;

(v) The marriage of an alien in K-4 status.

(vi) The denial of any of these petitions or applications to a K-3 also results in termination of a dependent K-4’s status. For purposes of this section, there is no denial or revocation of a petition or application until the administrative appeal applicable to that application or petition has been exhausted.

(1) *Intracompany transferees*—(1) *Admission of intracompany transferees*—(i) *General.* Under section 101(a)(15)(L) of the Act, an alien who within the preceding three years has been employed abroad for one continuous year by a

qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch, affiliate, or subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge. An alien transferred to the United States under this non-immigrant classification is referred to as an intracompany transferee and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions. Certain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, affiliates, or subsidiaries specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) *Definitions*—(A) *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

(B) *Managerial capacity* means an assignment within an organization in which the employee primarily:

(1) Manages the organization, or a department, subdivision, function, or component of the organization;

(2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(C) *Executive capacity* means an assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component, or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(D) *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

(E) *Specialized knowledge professional* means an individual who has specialized knowledge as defined in paragraph (1)(1)(ii)(D) of this section and is a member of the professions as defined in

section 101(a)(32) of the Immigration and Nationality Act.

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and

Department of Homeland Security

§214.2

controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

(M) *Director* means a Service Center director with delegated authority at 8 CFR 103.1.

(2) *Filing of petitions.* (

(i) Except as provided in paragraph (1)(2)(ii) and (1)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee must file a petition on Form I-129, Petition for Nonimmigrant Worker. The petitioner shall advise USCIS whether a previous petition for the same beneficiary has been filed, and certify that another petition for the same beneficiary will not be filed unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed may result in a denial of the petition.

(ii) A United States petitioner which meets the requirements of paragraph (1)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of the Act multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I-129. The blanket petition shall be maintained at the adjudicating office. The petitioner shall be the single representative for the qualifying organizations with which USCIS

will deal regarding the blanket petition.

(3) *Evidence for individual petitions.* An individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii) (B) or (C) of this section, supported by information regarding:

(I) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

(vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

(vii) If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

(viii) Such other evidence as the director, in his or her discretion, may deem necessary.

(4) *Blanket petitions.* (i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

(A) The petitioner and each of those entities are engaged in commercial trade or services;

(B) The petitioner has an office in the United States that has been doing business for one year or more;

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or

have a United States work force of at least 1,000 employees.

(ii) Managers, executives, and specialized knowledge professionals employed by firms, corporations, or other entities which have been found to be qualifying organizations pursuant to an approved blanket petition may be classified as intracompany transferees and admitted to the United States as provided in paragraphs (1) (5) and (11) of this section.

(iii) When applying for a blanket petition, the petitioner shall include in the blanket petition all of its branches, subsidiaries, and affiliates which plan to seek to transfer aliens to the United States under the blanket petition. An individual petition may be filed by the petitioner or organizations in lieu of using the blanket petition procedure. However, the petitioner and other qualifying organizations may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility. Whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner shall advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

(iv) *Evidence.* A blanket petition filed on Form I-129 shall be accompanied by:

(A) Evidence that the petitioner meets the requirements of paragraph (1)(4)(i) of this section.

(B) Evidence that all entities for which approval is sought are qualifying organizations as defined in subparagraph (1)(1)(ii)(G) of this section.

(C) Such other evidence as the director, in his or her discretion, deems necessary in a particular case.

(5) *Certification and admission procedures for beneficiaries under blanket petition—(1) Jurisdiction.* United States consular officers shall have authority to determine eligibility of individual beneficiaries outside the United States seeking L classification under blanket petitions, except for visa-exempt nonimmigrants. An application for a visa-exempt nonimmigrant seeking L classification under a blanket petition or

Department of Homeland Security

§ 214.2

by an alien in the United States applying for change of status to L classification under a blanket petition shall be filed with the Service office at which the blanket petition was filed.

(ii) *Procedures.* (A) When one qualifying organization listed in an approved blanket petition wishes to transfer an alien outside the United States to a qualifying organization in the United States and the alien requires a visa to enter the United States, that organization shall complete Form I-129S, Certificate of Eligibility for Intracompany Transferee under a Blanket Petition, in an original and three copies. The qualifying organization shall retain one copy for its records and send the original and two copies to the alien. A copy of the approved Form I-797 must be attached to the original and each copy of Form I-129S.

(B) After receipt of Form I-797 and Form I-129S, a qualified employee who is being transferred to the United States may use these documents to apply for visa issuance with the consular officer within six months of the date on Form I-129S.

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I-129S, Certificate of Eligibility, and a copy of the approval notice, Form I-797, to the USCIS office with which the blanket petition was filed.

(D) The consular or Service officer shall determine whether the position in which the alien will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular or Service officer shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the petition and was in a position as manager, executive, or specialized knowledge professional.

(E) Consular officers may grant "L" classification only in clearly approv-

able applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records.

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on Form I-129S, retain one copy, return the original of I-129S to the USCIS office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien on Form I-129, Petition for Nonimmigrant Worker. The petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

(G) An alien admitted under an approved blanket petition may be reassigned to any organization listed in the approved petition without referral to the Service during his/her authorized stay if the alien will be performing virtually the same job duties. If the alien will be performing different job duties, the petitioner shall complete a new Certificate of Eligibility and send it for approval to the director who approved the blanket petition.

(6) *Copies of supporting documents.* The petitioner may submit a legible photocopy of a document in support of the visa petition, in lieu of the original document. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition—(i) General.* The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been filed. If additional information is required from the petitioner, the 30 day processing period shall begin again upon receipt of the information. The original Form I-797 received from the USCIS with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (1)(13) of this section.

(A) *Individual petition—(1) Form I-797* shall include the beneficiary's name and classification and the petition's period of validity.

(2) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's services, not to exceed three years, except where the beneficiary is coming to the United States to open or to be employed in a new office.

(3) If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (1)(14)(ii) of this section that it is doing business as defined in paragraph (1)(1)(ii)(H) of this section to extend the validity of the petition.

(B) *Blanket petition. (1) Form I-797* shall identify the approved organizations included in the petition and the petition's period of validity.

(2) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(3) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(C) *Amendments.* The petitioner must file an amended petition, with fee, at

the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (*i.e.*, from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to L non-immigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she has been granted employment authorization.

(8) *Denial of petition—(i) Individual petition.* If an individual is denied, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial.

(ii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial. If the petition is denied in part, the USCIS office issuing the denial shall forward to the petitioner, along with the denial, a Form I-797 listing those organizations which were found to qualify. If the decision to deny is reversed on appeal, a new Form I-797 shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions—(i) General.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any individual or blanket petition is automatically revoked if the petitioner withdraws the petition or the petitioner fails to request indefinite validity of a blanket petition.

(iii) *Revocation on notice.* (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(1) One or more entities are no longer qualifying organizations;

(2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;

(3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;

(4) The statement of facts contained in the petition was not true and correct; or

(5) Approval of the petition involved gross error; or

(6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

(iv) *Status of beneficiaries.* If an individual petition is revoked, the beneficiary shall be required to leave the United States, unless the beneficiary has obtained other work authorization from the Service. If a blanket petition is revoked and the petitioner and beneficiaries already in the United States are otherwise eligible for L classification, the director shall extend the blanket petition for a period necessary to support the stay of those blanket L beneficiaries. The approval notice, Form I-171C, shall include only the names of qualifying organizations and covered beneficiaries. No new beneficiaries may be classified or admitted under this limited extension.

(10) *Appeal of denial or revocation of individual or blanket petition.* (i) A petition denied in whole or in part may be appealed under 8 CFR part 103. Since the determination on the Certificate of Eligibility, Form I-129S, is part of the

petition process, a denial or revocation of approval of an I-129S is appealable in the same manner as the petition.

(ii) A petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire while the alien is in the United States, the burden is on the petitioner to file for indefinite validity of the blanket petition or to file an individual petition in the alien's behalf to support the alien's status in the United States. The admission period for any alien under section 101(a)(15)(L) shall not exceed three years unless an extension of stay is granted pursuant to paragraph (1)(15) of this section.

(12) *L-1 limitation on period of stay—(i) Limits.* An alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in a managerial or executive capacity under section 101(a)(15) (L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15) (L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15) (L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. The petitioner shall provide information about

the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five years in the United States as a professional with specialized knowledge or seven years in the United States as a manager or executive, unless the alien has met the requirements contained in this paragraph.

(ii) *Exceptions.* The limitations of paragraph (1)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Beneficiary's use of Form I-797 and Form I-129S—(i) Beneficiary of an individual petition.* The beneficiary of an individual petition who does not require a nonimmigrant visa may present a copy of Form I-797 at a port of entry to facilitate entry into the United States. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition (provided that the beneficiary is entering or reentering the United States) for entry and reentry to resume the same employment with the same petitioner (within the validity period of the petition) and to apply for an extension of stay. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-797 to apply for a new or revalidated visa during the validity period of the petition and to apply for an extension of stay.

(ii) *Beneficiary of a blanket petition.* Each alien seeking L classification and admission under a blanket petition

shall present a copy of Form I-797 and a Form I-129S from the petitioner which identifies the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties for both the new and former positions, and the positions, dates, and locations of previous L stays in the United States. A current copy of Form I-797 and Form I-129S should be retained by the beneficiary and used for leaving and reentering the United States to resume employment with a qualifying organization during his/her authorized period of stay, for applying for a new or revalidated visa, and for applying for readmission at a port of entry. The alien may be readmitted even though reassigned to a different organization named on the Form I-797 than the one shown on Form I-129S if the job duties are virtually the same.

(14) *Extension of visa petition validity—(i) Individual petition.* The petitioner shall file a petition extension on Form I-129 to extend an individual petition under section 101(a)(15)(L) of the Act. Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(ii) *New offices.* A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of

Department of Homeland Security

§214.2

wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

(iii) *Blanket petitions*—(A) *Extension procedure*. A blanket petition may only be extended indefinitely by filing a new Form I-129 with a copy of the previous approval notice and a report of admissions during the preceding three years. The report of admissions shall include a list of the aliens admitted under the blanket petition during the preceding three years, including positions held during that period, the employing entity, and the dates of initial admission and final departure of each alien. The petitioner shall state whether it still meets the criteria for filing a blanket petition and shall document any changes in approved relationships and additional qualifying organizations.

(B) *Other conditions*. If the petitioner in an approved blanket petition fails to request indefinite validity or if indefinite validity is denied, the petitioner and its other qualifying organizations shall seek L classification by filing individual petitions until another three years have expired; after which the petitioner may seek approval of a new blanket petition.

(15) *Extension of stay*. (i) In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. When the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to

cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

(16) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on L-1 classification*. An alien may legitimately come to the United States for a temporary period as an L-1 nonimmigrant and, at the same time, lawfully seek to become a permanent resident of the United States provided he or she intends to depart voluntarily at the end of his or her authorized stay. The filing of an application for or approval of a permanent labor certification, an immigrant visa preference petition, or the filing of an application of readjustment of status for an L-1 nonimmigrant shall not be the basis for denying:

(i) An L-1 petition filed on behalf of the alien,

(ii) A request to extend an L-1 petition which had previously been filed on behalf of the alien;

(iii) An application for admission as an L-1 nonimmigrant by the alien, or as an L-2 nonimmigrant by the spouse or child of such alien;

(iv) An application for change of status to H-1 or L-2 nonimmigrant filed

by the alien, or to H-1, H-4, or L-1 status filed by the L-2 spouse or child of such alien;

(v) An application for change of status to H-4 nonimmigrant filed by the L-1 nonimmigrant, if his or her spouse has been approved for classification as an H-1; or

(vi) An application for extension of stay filed by the alien, or by the L-2 spouse or child of such alien.

(17) *Filing of individual petitions and certifications under blanket petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA)*—(i) *Individual petitions.* Except as provided in paragraph (1)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129 in conjunction with an application for admission of the citizen of Canada. Such filing may be made with an immigration officer at a Class A port of entry located on the United States-Canada land border or at a United States pre-clearance/pre-flight station in Canada. The petitioning employer need not appear, but Form I-129 must bear the authorized signature of the petitioner.

(ii) *Certification of eligibility for intracompany transferee under the blanket petition.* An immigration officer at a location identified in paragraph (1)(17)(i) of this section may determine eligibility of individual citizens of Canada seeking L classification under approved blanket petitions. At these locations, such citizens of Canada shall present the original and two copies of Form I-129S, Intracompany Transferee Certificate of Eligibility, prepared by the approved organization, as well as three copies of Form I-797, Notice of Approval of Nonimmigrant Visa Petition.

(iii) Nothing in this section shall preclude or discourage the advance filing of petitions and certificates of eligibility in accordance with paragraph (1)(2) of this section.

(iv) *Deficient or deniable petitions or certificates of eligibility.* If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary sup-

porting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

(v) *Spouse and dependent minor children accompanying or following to join.*

(A) The Canadian citizen spouse and Canadian citizen unmarried minor children of a Canadian citizen admitted under this paragraph shall be entitled to the same nonimmigrant classification and same length of stay subject to the same limits as the principal alien. They shall not be required to present visas, and they shall be admitted under the classification symbol L-2.

(B) A non-Canadian citizen spouse or non-Canadian citizen unmarried minor child shall be entitled to the same nonimmigrant classification and the same length of stay subject to the same limits as the principal, but shall be required to present a visa upon application for admission as an L-2 unless otherwise exempt under §212.1 of this chapter.

(C) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

(18) *Denial of intracompany transferee status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) If the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress where the beneficiary is to

be employed, and the temporary entry of the beneficiary may affect adversely the settlement of such labor dispute or the employment of any person who is involved in such dispute, a petition to classify a citizen of Mexico or Canada as an L-1 intracompany transferee may be denied. If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but not yet commenced employment, the approval of the petition may be suspended, and an application for admission on the basis of the petition may be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (1)(18)(i) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions.

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other L nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving work stoppage of workers; and

(C) Although participation by an L nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his

or her authorized period of stay has expired will be subject to deportation.

(m) *Students in established vocational or other recognized nonacademic institutions, other than in language training programs—(1) Admission of student—(i) Eligibility for admission.* A non-immigrant student may be admitted into the United States in non-immigrant status under section 101(a)(15)(M) of the Act, if:

(A) The student presents a SEVIS Form I-20 issued in his or her own name by a school approved by the Service for attendance by M-1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I-20M-N/I-20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I-20 (or the Form I-20M-N/I-20ID); and

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I-20 (or the Form I-20M-N/I-20ID)).

(ii) *Disposition of Form I-20M-N.* When a student is admitted to the United States, the inspecting officer shall forward Form I-20M-N to the Service's processing center. The processing center shall forward Form I-20N to the school which issued the form to notify the school of the student's admission.

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I-20. A student or dependent who presents a non-SEVIS Form I-20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I-20 issued prior to January 30, 2003, will continue to be accepted for admission to the United States until August 1, 2003. However, schools must issue a SEVIS Form I-20 to any current student requiring a reportable action (e.g., extension of status, practical training, and requests for employment authorization) or a new

Form I-20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

(2) *Form I-20 ID copy.* The first time an M-1 student comes into contact with the Service for any reason, the student must present to the Service a Form I-20M-N properly and completely filled out by the student and by the designated official of the school the student is attending or intends to attend. The student will be issued a Form I-20 ID copy with his or her admission number. The student must have the Form I-20 ID copy with him or her at all times. If the student loses the Form I-20 ID copy, the student must request a new Form I-20 ID copy on Form I-102 from the Service office having jurisdiction over the school the student was last authorized to attend.

(3) *Admission of the spouse and minor children of an M-1 student.* The spouse and minor children accompanying an M-1 student are eligible for admission in M-2 status if the student is admitted in M-1 status. The spouse and minor children following-to-join an M-1 student are eligible for admission to the United States in M-2 status if they are able to demonstrate that the M-1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an M-1 student with a SEVIS Form I-20 must individually present an original SEVIS Form I-20 issued in the name of each M-2 dependent issued by a school authorized by the Service for attendance by M-1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an M-1 student in possession of a SEVIS Form I-20 to enter the United States using a copy of the M-1 student's SEVIS Form I-20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the M-1 student's current Form I-20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I-20

(or Form I-20M-N) is required for a dependent where there has been any substantive change in the M-1 student's current information.

(i) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(ii) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

(4) *Temporary absence—(i) General.* An M-1 student returning to the United States from a temporary absence to attend the school which the student was previously authorized to attend must present either—

(A) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(B) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

(ii) *Student who transferred between schools.* If an M-1 student has been authorized to transfer between schools and is returning to the United States from a temporary absence in order to attend the school to which transfer was authorized as indicated on the student's Form I-20 ID copy, the name of the school to which the student is destined does not need to be specified in the student's visa.

(5) *Period of stay.* A student in M nonimmigrant status is admitted for a fixed time period, which is the period necessary to complete the course of study indicated on the Form I-20, plus practical training following completion of the course of study, plus an additional 30 days to depart the United States, but not to exceed a total period of one year. An M-1 student may be admitted for a period up to 30 days before the report date or start date of the course of study listed on the Form I-20. An M-1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for the additional 30-day period of stay.

(6)–(8) [Reserved]

Department of Homeland Security

§214.2

(9) *Full course of study.* Successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A “full course of study” as required by section 101(a)(15)(M)(i) of the Act means—

(i) Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in §214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in §214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or

(iv) Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not

less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(v) *On-line courses/distance education programs.* No on-line or distance education classes may be considered to count toward an M-1 student's full course of study requirement if such classes do not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing.

(vi) *Reduced course load.* The designated school official may authorize an M-1 student to engage in less than a full course of study only where the student has been compelled by illness or a medical condition that has been documented by a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to interrupt or reduce his or her course of study. A DSO may not authorize a reduced course load for more than an aggregate of 5 months per course of study. An M-1 student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 5 months, may not be authorized by the DSO to reduce his or her course load on subsequent occasions during his or her particular course of study.

(A) *Non-SEVIS schools.* A DSO must report any student who has been authorized by the DSO to carry a reduced course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's Form I-20 to the Service's data processing center indicating the date that authorization was granted. The DSO must also report to the Service's data processing center when the student has resumed a full course of study, no more than 21 days from the date the student resumed a full course of study. In this case, the DSO must submit a photocopy of the student's Form I-20 indicating the date that a full course of study was resumed, with a new program end date.

(B) *SEVIS reporting.* In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study.

(10) *Extension of stay—(i) Eligibility.* The cumulative time of extensions that can be granted to an M–1 student is limited to a period of 3 years from the M–1 student's original start date, plus 30 days. No extension can be granted to an M–1 student if the M–1 student is unable to complete the course of study within 3 years of the original program start date. This limit includes extensions that have been granted due to a drop below full course of study, a transfer of schools, or reinstatement. An M–1 student may be granted an extension of stay if it is established that:

(A) He or she is a bona fide nonimmigrant currently maintaining student status;

(B) Compelling educational or medical reasons have resulted in a delay to his or her course of study. Delays caused by academic probation or suspension are not acceptable reasons for program extension; and

(C) He or she is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application.* A student must apply to the Service for an extension on Form I–539, Application to Extend/Change Nonimmigrant Status. A student's M–2 spouse and children seeking an extension of stay must be included in the application. The student must submit the application to the service center having jurisdiction over the school the student is currently authorized to attend, at least 15 days but not more than 60 days before the program end date on the student's Form I–20. The application must also be accompanied by the student's Form I–20 and the Forms I–94 of the student's spouse and children, if applicable.

(iii) *Period of stay.* If an application for extension is granted, the student and the student's spouse and children,

if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States, or for a total period of one year, whichever is less. A student's M–2 spouse and children are not eligible for an extension unless the M–1 student is granted an extension of stay, or for a longer period than is granted to the M–1 student.

(iv) *SEVIS update.* A DSO must update SEVIS to recommend that a student be approved for an extension of stay. The SEVIS Form I–20 must be printed with the recommendation and new program end date for submission by mail to the service center, with Form I–539, and Forms I–94 if applicable.

(11) *School transfer—(i) Eligibility.* An M–1 student may not transfer to another school after six months from the date the student is first admitted as, or changes nonimmigrant classification to that of, an M–1 student unless the student is unable to remain at the school to which the student was initially admitted due to circumstances beyond the student's control. An M–1 student may be otherwise eligible to transfer to another school if the student—

(A) Is a bona fide nonimmigrant;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer.

(ii) *Procedure.* A student must apply to the Service on Form I–539 for permission to transfer between schools. Upon application for school transfer, a student may effect the transfer subject to approval of the application. A student who transfers without complying with this requirement or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be determined to be the program start date listed on the Form I–20, and

the student will be granted an extension of stay for the period of time necessary to complete the new course of study plus 30 days, or for a total period of one year, whichever is less.

(A) *Non-SEVIS school.* The application must be accompanied by the Form I-20ID copy and the Form I-94 of the student's spouse and children, if applicable. The Form I-539 must also be accompanied by Form I-20M-N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. Upon approval, the adjudicating officer will endorse the name of the school to which the transfer is authorized on the student's Form I-20ID copy and return it to the student. The officer will also endorse Form I-20M-N to indicate that a school transfer has been authorized and forward it to the Service's processing center for updating. The processing center will forward Form I-20M-N to the school to which the transfer has been authorized to notify the school of the action taken.

(B) *SEVIS school.* The student must first notify his or her current school of the intent to transfer and indicate the school to which the student intends to transfer. Upon notification by the student, the current school must update SEVIS to show the student as a "transfer out" and input the "release date" for transfer. Once updated as a "transfer out" the transfer school is permitted to generate a SEVIS Form I-20 for transfer but will not gain access to the student's SEVIS record until the release date is reached. Upon receipt of the SEVIS Form I-20 from the transfer school, the student must submit Form I-539 in accordance with §214.2(m)(11). The student may enroll in the transfer school at the next available term or session and is required to notify the DSO of the transfer school immediately upon beginning attendance. The transfer school must update the student's registration record in SEVIS in accordance with §214.3(g)(3). Upon approval of the transfer application, the Service officer will endorse the name of the school to which the transfer is authorized on the student's SEVIS Form I-20 and return it to the student.

(C) *Transition process.* Once SEVIS is fully operational and interfaced with the service center benefit processing system, the Service officer will transmit the approval of the transfer to SEVIS and endorse the name of the school to which transfer is authorized on the student's SEVIS Form I-20 and return it to the student. As part of a transitional process until that time, the student is required to notify the DSO at the transfer school of the decision of the Service within 15 days of the receipt of the adjudication by the Service. Upon notification by the student of the approval of the Service, the DSO must immediately update SEVIS to show that approval of the transfer has been granted. The DSO must then print an updated SEVIS Form I-20 for the student indicating that the transfer has been completed. If the application for transfer is denied, the student is out of status and the DSO must terminate the student's record in SEVIS.

(iii) *Student who has not been pursuing a full course of study.* If an M-1 student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to student status under paragraph (m)(16) of this section.

(12) *Change in educational objective.* An M-1 student may not change educational objective.

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, a student may not accept employment.

(14) *Practical training—(i) When practical training may be authorized.* Temporary employment for practical training may be authorized only after completion of the student's course of study.

(A) The proposed employment is recommended for the purpose of practical training;

(B) The proposed employment is related to the student's course of study; and

(C) Upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence.

(ii) *Application.* A M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR 103.7(b)(1), accompanied by a Form I–20 that has been endorsed for practical training by the designated school official. The application must be submitted prior to the program end date listed on the student’s Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that—

(A) The proposed employment is recommended for the purpose of practical training;

(B) The proposed employment is related to the student’s course of study; and

(C) Upon the designated school official’s information and belief, employment comparable to the proposed employment is not available to the student in the country of the student’s foreign residence.

(iii) *Duration of practical training.* When the student is authorized to engage in employment for practical training, he or she will be issued an employment authorization document. The M–1 student may not begin employment until he or she has been issued an employment authorization document by the Service. One month of employment authorization will be granted for each four months of full-time study that the M–1 student has completed. However, an M–1 student may not engage in more than six months of practical training in the aggregate. The student will not be granted employment authorization if he or she cannot complete the requested practical training within six months.

(iv) *Temporary absence of M–1 student granted practical training.* An M–1 student who has been granted permission to accept employment for practical training and who temporarily departs from the United States, may be readmitted for the remainder of the authorized period indicated on the student’s Form I–20 ID copy. The student must be returning to the United States to perform the authorized practical training. A student may not be readmitted to begin practical training which was not authorized prior to the

student’s departure from the United States.

(v) *Effect of strike or other labor dispute.* Authorization for all employment for practical training is automatically suspended upon certification by the Secretary of Labor or the Secretary’s designee to the Commissioner of Immigration and Naturalization or the Commissioner’s designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, “place of employment” means wherever the employer or joint employer does business.

(vi) *SEVIS process.* The DSO must update the student’s record in SEVIS to recommend that the Service approve the student for practical training, and print SEVIS Form I–20 with the recommendation, for the student to submit to the Service with Form I–765 as provided in this paragraph (m)(14).

(15) *Decision on application for extension, permission to transfer to another school, or permission to accept employment for practical training.* The Service shall notify the applicant of the decision and, if the application is denied, of the reason(s) for the denial. The applicant may not appeal the decision.

(16) *Reinstatement to student status—(i) General.* A district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Non-immigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO’s recommendation for reinstatement (or a properly completed Form I–20M–N issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request only if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

Department of Homeland Security

§214.2

(B) Does not have a record of repeated or willful violations of the Service regulations;

(C) Is currently pursuing, or intends to pursue, a full course of study at the school which issued the Form I-20M-N or SEVIS Form I-20;

(D) Has not engaged in unlawful employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(I) The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(2) The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I-20 to indicate that the student has been reinstated and return the form to the student. If the Form I-20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I-20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if the Service does not reinstate the student, the student may not appeal the decision. The district director will send notification to the school of the decision.

(17) *Spouse and children of M-1 student.* The M-2 spouse and minor children of an M-1 student shall each be issued an individual SEVIS Form I-20 in accordance with the provisions of §214.3(k).

(i) *Employment.* The M-2 spouse and children may not accept employment.

(ii) *Study—(A) M-2 post-secondary/vocational study—(1) Authorized study at*

SEVP-certified schools. An M-2 spouse or M-2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the M-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An M-2 spouse or M-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraph (m)(14) of this section or pursuant to paragraphs (f)(9) through (10) of this section.

(2) *Full course of study.* Subject to paragraph (m)(17)(ii)(B) of this section, an M-2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F-1, M-1, or J-1 status, as appropriate, before beginning a full course of study. An M-2 spouse and M-2 child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) *M-2 elementary or secondary study.* An M-2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An M-2 spouse or child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (m)(17)(ii)(A) or (B) of this section.

(18) *Current name and address.* A student must inform the Service and the DSO of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, and the DSO in turn shall enter the information in SEVIS within 21 days of notification by the student. A nonimmigrant student enrolled at a

non-SEVIS institution must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service, the actual physical location where the student resides.

(19) *Special rules for certain border commuter students*—(i) *Applicability*. For purposes of the special rules in this paragraph (m)(19), the term “border commuter student” means a national of Canada or Mexico who is admitted to the United States as an M–1 student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. The border commuter student must maintain actual residence and place of abode in the student’s country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an M–1 student, or

(B) Enrolled in a full course of study as defined in paragraph (m)(9) of this section.

(ii) *Full course of study*. The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or vocational objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (m)(9) of this section, provided that the reduced course load is consistent with the border commuter student’s approved course of study.

(iii) *Period of stay*. An M–1 border commuter student is not entitled to an additional 30-day period of stay otherwise available under paragraph (m)(5) of this section.

(iv) *Employment*. A border commuter student may not be authorized to accept any employment in connection with his or her M–1 student status, except for practical training as provided in paragraph (m)(14) of this section.

(20) *Remittance of the fee*. An alien who applies for M–1 or M–3 non-immigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution is required to pay the SEVIS fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants*—(1) *Parent of special immigrant*. Upon application, a parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may be granted status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility is derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants*. Children of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I) (ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay*. A nonimmigrant granted (N) status shall be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status as an (N) nonimmigrant shall terminate on the date the child described in paragraph (n)(1) or (n)(2) of this section no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment*. A nonimmigrant admitted in or granted (N) status is authorized employment incident to (N) status without restrictions as to location or type of employment.

(o) *Aliens of extraordinary ability or achievement*—(1) *Classifications*—(i) *General*. Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event

or events if petitioned for by an employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(O)(i) of the Act as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry. Under section 101(a)(15)(O)(ii) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be classified as an accompanying alien who is coming to assist in the artistic or athletic performance of an alien admitted under section 101(a)(15)(O)(i) of the Act. The spouse or child of an alien described in section 101(a)(15)(O)(i) or (ii) of the Act who is accompanying or following to join the alien is entitled to classification pursuant to section 101(a)(15)(O)(iii) of the Act. These classifications are called the O-1, O-2, and O-3 categories, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O-1 or O-2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.* (A) An O-1 classification applies to:

(1) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

(2) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

(B) An O-2 classification applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1. The O-2 alien must:

(1) Be an integral part of the actual performances or events and possess crit-

ical skills and experience with the O-1 alien that are not of a general nature and which are not possessed by others; or

(2) In the case of a motion picture or television production, have skills and experience with the O-1 alien which are not of a general nature and which are critical, either based on a pre-existing and longstanding working relationship or, if in connection with a specific production only, because significant production (including pre- and post-production) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(2) *Filing of petitions*—(i) *General.* Except as provided for in paragraph (o)(2)(iv)(A) of this section, a petitioner seeking to classify an alien as an O-1 or O-2 nonimmigrant shall file a petition on Form I-129, Petition for a Nonimmigrant Worker. The petition may not be filed more than one year before the actual need for the alien's services. An O-1 or O-2 petition shall be adjudicated at the appropriate Service Center, even in emergency situations. Only one beneficiary may be included on an O-1 petition. O-2 aliens must be filed for on a separate petition from the O-1 alien. An O-1 or O-2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (o) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept services of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. An O alien may not petition for himself or herself.

(ii) *Evidence required to accompany a petition.* Petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

(iii) *Form of documentation.* The evidence submitted with an O petition shall conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

(B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or in the case of a motion picture or television production, the extraordinary achievement of the alien, shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(C) A legible photocopy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the Director.

(iv) *Other filing situations—(A) Services in more than one location.* A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work.

(B) *Services for more than one employer.* If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition unless an established agent files the petition.

(C) *Change of employer.* If an O–1 or O–2 alien in the United States seeks to change employers, the new employer must file a petition and a request to extend the alien's stay. An O–2 alien

may change employers only in conjunction with a change of employers by the principal O–1 alien. If the O–1 or O–2 petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

(D) *Amended petition.* The petitioner shall file an amended petition on Form I–129, with fee, to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. In the case of a petition filed for an artist or entertainer, a petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition, provided the additional performances or engagements require an alien of O–1 caliber.

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

(1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and

the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien for the same events or performances, during the same period of time, and in the same location.

(G) *Traded professional O-1 athletes.* In the case of a professional O-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I-129. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid O-1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(3) *Petition for alien of extraordinary ability or achievement (O-1)*—(i) *General.* Extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in the case of an alien in the motion picture or television industry, must be established for an individual alien. An O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability, and that the alien meets the criteria in paragraph (o)(3)(iii) or (iv) of this section.

(ii) *Definitions.* As used in this paragraph, the term:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not

only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestral conductors, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

Peer group means a group or organization which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

(iii) *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily

apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(iv) *Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials

Department of Homeland Security

§214.2

must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(v) *Evidentiary criteria for an alien of extraordinary achievement in the motion picture or television industry.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or criti-

cally acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to other in the field, as evidenced by contracts or other reliable evidence.

(4) *Petition for an O-2 accompanying alien—(i) General.* An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business, or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien.

(ii) *Evidentiary criteria for qualifying as an O-2 accompanying alien—(A) Alien accompanying an O-1 artist or athlete of extraordinary ability.* To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.

(B) *Alien accompanying an O-1 alien of extraordinary achievement.* To qualify as an O-2 alien accompanying and O-1 alien involved in a motion picture or television production, the alien must have skills and experience with the O-1 alien which are not of a general nature and which are critical based on a

pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien. In the case of a specific motion picture or television production, the evidence shall establish that significant production has taken place outside the United States, and will take place inside the United States, and that the continuing participation of the alien is essential to the successful completion of the production.

(5) *Consultation*—(i) *General*. (A) Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved.

(B) Except as provided in paragraph (o)(5)(i)(E) of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor and/or management organization with expertise in the specific field involved.

(C) Except as provided in paragraph (o)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor, and/or management organization with expertise in the specific field involved. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an au-

thorized official of the group or organization.

(D) Except as provided in paragraph (o)(5)(i)(E) and (G) of this section, written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory and are not binding on the Service.

(E) In a case where the alien will be employed in the field of arts, entertainment, or athletics, and the Service has determined that a petition merits expeditious handling, the Service shall contact the appropriate labor and/or management organization and request an advisory opinion if one is not submitted by the petitioner. The labor and/or management organization shall have 24 hours to respond to the Service's request. The Service shall adjudicate the petition after receipt of the response from the consulting organization. The labor and/or management organization shall then furnish the Service with a written advisory opinion within 5 days of the initiating request. If the labor and/or management organization fails to respond within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In a routine processing case where the petition is accompanied by a written opinion from a peer group, but the peer group is not a labor organization, the Director will forward a copy of the petition and all supporting documentation to the national office of the appropriate labor organization within 5 days of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization for purposes of this section. The labor organization will then have 15 days from receipt of the petition and supporting documents to submit to the Service a written advisory opinion, comment, or letter of no objection. Once the 15-day period has expired, the Director shall adjudicate the petition in no more than 14 days. The Director may shorten this time in his or her discretion for emergency reasons, if no unreasonable burden would be imposed on any participant in the

process. If the labor organization does not respond within 15 days, the Director will render a decision on the record without the advisory opinion.

(G) In those cases where it is established by the petitioner that an appropriate peer group, including a labor organization, does not exist, the Service shall render a decision on the evidence of record.

(ii) *Consultation requirements for an O-1 alien for extraordinary ability*—(A) *Content*. Consultation with a peer group in the area of the alien's ability (which may include a labor organization), or a person or persons with expertise in the area of the alien's ability, is required in an O-1 petition for an alien of extraordinary ability. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, it should describe the alien's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(B) *Waiver of consultation of certain aliens of extraordinary ability in the field of arts*. Consultation for an alien of extraordinary ability in the field of arts shall be waived by the Director in those instances where the alien seeks readmission to the United States to perform similar services within 2 years of the date of a previous consultation. The director shall, within 5 days of granting the waiver, forward a copy of the petition and supporting documentation to the national office of an appropriate labor organization. Petitioners desiring to avail themselves of the waiver should submit a copy of the prior consultation with the petition and advise the Director of the waiver request.

(iii) *Consultation requirements for an O-1 alien of extraordinary achievement*. In the case of an alien of extraordinary achievement who will be working on a motion picture or television produc-

tion, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

(iv) *Consultation requirements for an O-2 accompanying alien*. Consultation with a labor organization with expertise in the skill area involved is required for an O-2 alien accompanying an O-1 alien of extraordinary ability. In the case of an O-2 alien seeking entry for a motion picture or television production, consultation with a labor organization and a management organization in the area of the alien's ability is required. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the opinion provided by the labor and/or management organization should describe the alien's essentiality to, and working relationship with, the O-1 artist or athlete and state whether there are available U.S. workers who can perform the support services. If the alien will accompany an O-1 alien involved in a motion picture or television production, the advisory opinion should address the alien's skills and experience with the O-1 alien and whether the alien has a pre-existing longstanding working relationship with the O-1 alien, or whether significant production will take place in the United States and abroad and if the continuing participation of the alien is essential to the successful completion

of the production. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(v) *Organizations agreeing to provide advisory opinions.* The Service will list in its Operations Instructions for O classification those peer groups, labor organizations, and/or management organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate peer groups, labor organizations, and management organizations. Additionally, the Service will list in its Operations Instructions those occupations or fields of endeavor where the nonexistence of an appropriate consulting entity has been verified.

(6) *Approval and validity of petition—*
(1) *Approval.* The Director shall consider all of the evidence submitted and such other evidence as may be independently required to assist in the adjudication. The Director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary name, the classification, and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are as follows;

(A) If a new O petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(B) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall generally show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit

specified in paragraph (o)(6)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity—*(A) *O-1 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

(B) *O-2 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(ii) of the Act shall be valid for a period of time determined to be necessary to assist the O-1 alien to accomplish the event or activity, not to exceed 3 years.

(iv) *Spouse and dependents.* The spouse and unmarried minor children of the O-1 or O-2 alien beneficiary are entitled to O-3 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(7) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103.

(8) *Revocation of approval of petition—*
(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(O) of the Act and paragraph (o) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the Director who approved the petition.

(B) The Director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner, or the named employer in a petition filed by an agent, goes out of business, files a written withdrawal of the petition, or

Department of Homeland Security

§214.2

notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation*. The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision*. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(9) *Appeal of a denial or a revocation of a petition*—(i) *Denial*. A denied petition may be appealed under 8 CFR part 103.

(ii) *Revocation*. A petition that has been revoked on notice may be appealed under 8 CFR part 103. Automatic revocations may not be appealed.

(10) *Admission*. A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may only engage in employment during the validity period of the petition.

(11) *Extension of visa petition validity*. The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on Form I-129, Petition for a Non-immigrant Worker, in order to continue or complete the same activities or events specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed

only if the validity of the original petition has not expired.

(12) *Extension of stay*—(i) *Extension procedure*. The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The alien beneficiary must be physically present in the United States at the time of filing of the extension of stay. Even though the request to extend the petition and the alien's stay are combined on the petition, the Director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the Director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension period*. An extension of stay may be authorized in increments of up to 1 year for an O-1 or O-2 beneficiary to continue or complete the same event or activity for which he or she was admitted plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order.

(iii) *Denial of an extension of stay*. The denial of the request for the alien's extension of temporary stay may not be appealed.

(13) *Effect of approval of a permanent labor certification or filing of a preference petition on O classification*. The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O-1 petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O-1 non-immigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(14) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(O) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (o)(14)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as are all other O nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by an O nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, and alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(15) *Use of approval notice, Form I-797.* The Service shall notify the petitioner of Form I-797 whenever a visa petition or an extension of a visa petition is approved under the O classification. The beneficiary of an O petition who does not require a nonimmigrant visa may present a copy of the approval notice at a Port-of-Entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission, and who visa will have expired before the date of his or her intended return, may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. A copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(16) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(O) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term “abroad” means the alien’s last place of residence prior to his or her entry into the United States.

(p) *Artists, athletes, and entertainers—*

(1) *Classifications—*(i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has not intention or abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under the nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United

States to perform services as an internationally recognized athlete, individually or as part of a group or team, or member of an internationally recognized entertainment group; under section 101(a)(15)(P)(ii) of the Act, who is coming to perform as an artist or entertainer under a reciprocal exchange program; under section 101(a)(15)(P)(iii) of the Act, as an alien who is coming solely to perform, teach, or coach under a program that is culturally unique; or under section 101(a)(15)(P)(iv) of the Act, as the spouse or child of an alien described in section 101(a)(15)(P) (i), (ii), or (iii) of the Act who is accompanying or following to join the alien. These classifications are called P-1, P-2, P-3, and P-4 respectively. The employer or sponsor must file a petition with the Service for review of the services to be performed and for determination of the alien's eligibility for P-1, P-2, or P-3 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classification.* (A) A P-1 classification applies to an alien who is coming temporarily to the United States:

(1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance, or

(2) To perform with, or as an integral and essential part of the performance of, and entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

(B) A P-2 classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an orga-

nization or organizations in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(C) A P-3 classification applies to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.

(2) *Filing of petitions*—(i) *General.* A P-1 petition for an athlete or entertainment group shall be filed by a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (p) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. Foreign employers seeking to employ a P-1 alien may not directly petition for the alien but must use a United States agent. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. A P-2 petition for an artist or entertainer in a reciprocal exchange program shall be filed by the United States labor organization which negotiated the reciprocal exchange agreement, the sponsoring organization, or a United States employer. A P-3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or a United States employer. Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition. The petitioner must file a P petition on Form I-129, Petition for Nonimmigrant Worker. The petition may not be filed more than one year before the actual need for the alien's services. A P-1, P-2, or P-3 petition shall be adjudicated at the appropriate Service Center, even in emergency situations.

(ii) *Evidence required to accompany a petition for a P nonimmigrant.* Petitions

for P nonimmigrant aliens shall be accompanied by the following:

(A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written consultation from a labor organization.

(iii) *Form of documentation.* The evidence submitted with an P petition should conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, establishment, or organization where the work has performed.

(B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or, in the case of a motion picture or television production, the extraordinary achievement of the alien, which shall specifically describe the alien's recognition and ability or achievement in factual terms. The affidavit must also set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(C) A legible copy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the Director.

(iv) *Other filing situations—(A) Services in more than one location.* A petition which requires the alien to work in more than one location (e.g., a tour) must include an itinerary with the dates and locations of the performances.

(B) *Services for more than one employer.* If the beneficiary or beneficiaries will work for more than one employer within the same time period, each employer must file a separate petition unless an agent files the petition

pursuant to paragraph (p)(2)(iv)(E) of this section.

(C) *Change of employer—(1) General.* If a P-1, P-2, or P-3 alien in the United States seeks to change employers or sponsors, the new employer or sponsor must file both a petition and a request to extend the alien's stay in the United States. The alien may not commence employment with the new employer or sponsor until the petition and request for extension have been approved.

(2) *Traded professional P-1 athletes.* In the case of a professional P-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I-129 for P-1 nonimmigrant classification. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid P-1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(D) *Amended petition.* The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. A petitioner may add additional, similar or comparable performance, engagements, or competitions during the validity period of the petition without filing an amended petition.

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the

Department of Homeland Security

§214.2

employer as its agent. A petition filed by an United States agent is subject to the following conditions:

(I) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for a P nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(H) *Substitution of beneficiaries.* A petitioner may request substitution of beneficiaries in approved P-1, P-2, and P-3 petitions for groups. To request substitution, the petitioner shall submit a letter requesting such substi-

tution, along with a copy of the petitioner's approval notice, to the consular office at which the alien will apply for a visa or the Port-of-Entry where the alien will apply for admission. Essential support personnel may not be substituted at consular offices or at Ports-of-entry. In order to add additional new essential support personnel, a new I-129 petition must be filed.

(3) *Definitions.* As used in this paragraph, the term:

Arts includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

Competition, event, or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event. In the case of a P-2 petition, the event may be the duration of the reciprocal exchange agreement. In the case of a P-1 athlete, the event may be the duration of the alien's contract.

Contract means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker

and which are essential to the successful performance of services by the P-1, P-2, alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Group means two or more persons established as one entity or unit to perform or to provide a service.

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

Member of a group means a person who is actually performing the entertainment services.

Sponsor means an established organization in the United States which will not directly employ a P-1, P-2, or P-3 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition.

Team means two or more persons organized to perform together as a competitive unit in a competitive event.

(4) *Petition for an internationally recognized athlete or member of an internationally recognized entertainment group (P-1)*—(i) *Types of classification*—(A) *P-1 classification as an athlete in an individual capacity*. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

(B) *P-1 classification as a member of an entertainment group or an athletic team*. An entertainment group or athletic team consists of two or more persons who function as a unit. The entertainment group or athletic team as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services which require an internationally recognized entertainment group or athletic team. A person who is a member of an internationally recognized entertainment group or athletic team may be granted

P-1 classification based on that relationship, but may not perform services separate and apart from the entertainment group or athletic team. An entertainment group must have been established for a minimum of 1 year, and 75 percent of the members of the group must have been performing entertainment services for the group for a minimum of 1 year.

(ii) *Criteria and documentary requirements for P-1 athletes*—(A) *General*. A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Evidentiary requirements for an internationally recognized athlete or athletic team*. A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

(2) Documentation of at least two of the following:

(i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(ii) Evidence of having participated in international competition with a national team;

(iii) Evidence of having participated to a significant extent in a prior season

Department of Homeland Security

§214.2

for a U.S. college or university in intercollegiate competition;

(iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;

(v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

(vi) Evidence that the individual or team is ranked if the sport has international rankings; or

(vii) Evidence that the alien or team has received a significant honor or award in the sport.

(iii) *Criteria and documentary requirements for members of an internationally recognized entertainment group*—(A) *General*. A P-1 classification shall be accorded to an entertainment group to perform as a unit based on the international reputation of the group. Individual entertainers shall not be accorded P-1 classification to perform separate and apart from a group. Except as provided in paragraph (p)(4)(iii)(C)(2) of this section, it must be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time. Seventy-five percent of the members of the group must have had a sustained and substantial relationship with the group for at least 1 year and must provide functions integral to the group's performance.

(B) *Evidentiary criteria for members of internationally recognized entertainment groups*. A petition for P-1 classification for the members of an entertainment group shall be accompanied by:

(1) Evidence that the group has been established and performing regularly for a period of at least 1 year;

(2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and

(3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial period of time. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international

awards or prices for outstanding achievement in its field or by three of the following different types of documentation:

(i) Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(ii) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(iii) Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(iv) Evidence that the group has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;

(v) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(vi) Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field as evidenced by contracts or other reliable evidence.

(C) *Special provisions for certain entertainment groups*—(1) *Alien circus personnel*. The 1-year group membership requirement and the international recognition requirement are not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such

circus or circus group, provided that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(2) *Certain nationally known entertainment groups.* The Director may waive the international recognition requirement in the case of an entertainment group which has been recognized nationally as being outstanding in its discipline for a sustained and substantial period of time in consideration of special circumstances. An example of a special circumstances would be when an entertainment group may find it difficult to demonstrate recognition in more than one country due to such factors as limited access to news media or consequences of geography.

(3) *Waiver of 1-year relationship in exigent circumstances.* The Director may waive the 1-year relationship requirement for an alien who, because of illness or unanticipated and exigent circumstances, replaces an essential member of a P-1 entertainment group or an alien who augments the group by performing a critical role. The Department of State is hereby delegated the authority to waive the 1-year relationship requirement in the case of consular substitutions involving P-1 entertainment groups.

(iv) *P-1 classification as an essential support alien—(A) General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

(B) *Evidentiary criteria for a P-1 essential support petition.* A petition for P-1 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(5) *Petition for an artist or entertainer under a reciprocal exchange program (P-2)—(i) General.* (A) A P-2 classification shall be accorded to artists or entertainers, individually or as a group, who will be performing under a reciprocal exchange program which is between an organization or organizations in the United States, which may include a management organization, and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(B) The exchange of artists or entertainers shall be similar in terms of caliber of artists or entertainers, terms and conditions of employment, such as length of employment, and numbers of artists or entertainers involved in the exchange. However, this requirement does not preclude an individual for group exchange.

(C) An alien who is an essential support person as defined in paragraph (p)(3) of this section may be accorded P-2 classification based on a support relationship to a P-2 artist or entertainer under a reciprocal exchange program.

(ii) *Evidentiary requirements for petition involving a reciprocal exchange program.* A petition for P-2 classification shall be accompanied by:

(A) A copy of the formal reciprocal exchange agreement between the U.S. organization or organizations which sponsor the aliens and an organization or organizations in a foreign country which will receive the U.S. artist or entertainers;

(B) A statement from the sponsoring organization describing the reciprocal exchange of U.S. artists or entertainers as it relates to the specific petition for which P-2 classification is being sought;

(C) Evidence that an appropriate labor organization in the United States was involved in negotiating, or has concurred with, the reciprocal exchange of U.S. and foreign artists or entertainers; and

(D) Evidence that the aliens for whom P-2 classification is being sought and the U.S. artists or entertainers subject to the reciprocal exchange agreement are artists or entertainers

Department of Homeland Security

§214.2

with comparable skills, and that the terms and conditions of employment are similar.

(iii) *P-2 classification as an essential support alien*—(A) *General*. An essential support alien as defined in paragraph (p)(3) of this section may be granted P-2 classification based on a support relationship with a P-2 entertainer or P-2 entertainment group.

(B) *Evidentiary criteria for a P-2 essential support petition*. A petition for P-2 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(6) *Petition for an artist or entertainer under a culturally unique program*—(i) *General*. (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

(ii) *Evidentiary criteria for a petition involving a culturally unique program*. A petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidence by reviews in news-

papers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

(iii) *P-3 classification as an essential support alien*—(A) *General*. An essential support alien as defined in paragraph (p)(3) of this section may be granted P-3 classification based on a support relationship with a P-3 entertainer or P-3 entertainment group.

(B) *Evidentiary criteria for a P-3 essential support petition*. A petition for P-3 essential support personnel must be accompanied by:

(1) A consultation from a labor organization with expertise in the area of the alien's skill;

(2) A statement describing the alien(s) prior essentiality, critical skills and experience with the principal alien(s); and

(3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

(7) *Consultation*—(i) *General*. (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from an appropriate labor organization.

(C) Except as provided in paragraph (p)(7)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from an appropriate labor organization. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. Advisory opinions must be submitted in writing and signed by an authorized official of the organization.

(D) Except as provided in paragraph (p)(7)(i) (E) and (F) of this section, written evidence of consultation shall

be included in the record of every approved petition. Consultations are advisory and are not binding on the Service.

(E) In a case where the Service has determined that a petition merits expeditious handling, the Service shall contact the labor organization and request an advisory opinion if one is not submitted by the petitioner. The labor organization shall have 24 hours to respond to the Service's request. The Service shall adjudicate the petition after receipt of the response from the labor organization. The labor organization shall then furnish the Service with a written advisory opinion within 5 working days of the request. If the labor organization fails to respond within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

(ii) *Consultation requirements for P-1 athletes and entertainment groups.* Consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in the case of a P-1 petition. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. If the advisory opinion provided by the labor organization is favorable to the petitioner it should evaluate and/or describe the alien's or group's ability and achievements in the field of endeavor, comment on whether the alien or group is internationally recognized for achievements, and state whether the services the alien or group is coming to perform are appropriate for an internationally recognized athlete or entertainment group. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(iii) *Consultation requirements for P-1 circus personnel.* The advisory opinion provided by the labor organization should comment on whether the circus which will employ the alien has national recognition as well as any other

aspect of the beneficiary's or beneficiaries' qualifications which the labor organization deems appropriate. If the advisory opinion is not favorable to the petitioner, it must set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(iv) *Consultation requirements for P-2 alien in a reciprocal exchange program.* In P-2 petitions where an artist or entertainer is coming to the United States under a reciprocal exchange program, consultation with the appropriate labor organization is required to verify the existence of a viable exchange program. The advisory opinion from the labor organization shall comment on the bona fides of the reciprocal exchange program and specify whether the exchange meets the requirements of paragraph (p)(5) of this section. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion.

(v) *Consultation requirements for P-3 in a culturally unique program.* Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs. If the advisory opinion is favorable to the petitioner, it should evaluate the cultural uniqueness of the alien's skills, state whether the events are cultural in nature, and state whether the event or activity is appropriate for P-3 classification. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor

organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(vii) *Labor organizations agreeing to provide consultations.* The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations. The Service will also list in its Operations Instructions those occupations or fields of endeavor where it has been determined by the Service that no appropriate labor organization exists.

(8) *Approval and validity of petition—*

(i) *Approval.* The Director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist in his or her adjudication. The Director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new P petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limit specified in paragraph (p)(8)(iii) of this section or other Service policy.

(B) If a new P petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall generally show a validity period com-

mencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified in paragraph (p)(8)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (p)(8)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The approval period of a P petition shall conform to the limits prescribed as follows:

(A) *P-1 petition for athletes.* An approved petition for an individual athlete classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period up to 5 years. An approved petition for an athletic team classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the Director to complete the competition or event for which the alien team is being admitted, not to exceed 1 year.

(B) *P-1 petition for an entertainment group.* An approved petition for an entertainment group classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the performance or event for which the group is being admitted, not to exceed 1 year.

(C) *P-2 and P-3 petitions for artists or entertainers.* An approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) or (iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity, or performance for which the P-2 or P-3 alien is admitted, not to exceed 1 year.

(D) *Spouse and dependents.* The spouse and unmarried minor children of a P-1, P-2, or P-3 alien beneficiary are entitled to P-4 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(E) *Essential support aliens.* Petitions for essential support personnel to P-1,

P-2, and P-3 aliens shall be valid for a period of time determined by the Director to be necessary to complete the event, activity, or performance for which the P-1, P-2, or P-3 alien is admitted, not to exceed 1 year.

(9) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien or a change of nonimmigrant status.

(10) *Revocation of approval of petition*—(i) *General*. (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(P) of the Act and paragraph (p) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the Director who approved the petition.

(B) The Director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation*. The approval of an unexpired petition is automatically revoked if the petitioner, or the employer in a petition filed by an agent, goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation*. The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition were not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or

(5) The approval of the petition violated paragraph (p) of this section or involved gross error.

(B) *Notice and decision*. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(11) *Appeal of a denial or a revocation of a petition*—(i) *Denial*. A denied petition may be appealed under 8 CFR part 103.

(ii) *Revocation*. A petition that has been revoked on notice may be appealed under 8 CFR part 103. Automatic revocations may not be appealed.

(12) *Admission*. A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(13) *Extension of visa petition validity*. The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

(14) *Extension of stay*—(i) *Extension procedure*. The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The extension dates shall be the same for the petition and the beneficiary's stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the petition and the alien's stay are combined on the petition, the Director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may

Department of Homeland Security

§214.2

request the Director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension periods*—(A) *P-1 individual athlete*. An extension of stay for a P-1 individual athlete and his or her essential support personnel may be authorized for a period up to 5 years for a total period of stay not to exceed 10 years.

(B) *Other P-1, P-2, and P-3 aliens*. An extension of stay may be authorized in increments of 1 year for P-1 athletic teams, entertainment groups, aliens in reciprocal exchange programs, aliens in culturally unique programs, and their essential support personnel to continue or complete the same event or activity for which they were admitted.

(15) *Effect of approval of a permanent labor certification or filing of a preference petition on P classification*. The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying a P petition, a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as a P nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States. This provision does not include essential support personnel.

(16) *Effect of a strike*—(i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(P) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and

the application for admission of the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (p)(16)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as all other P nonimmigrant aliens;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by a P nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired, will be subject to deportation.

(17) *Use of approval of notice, Form I-797*. The Service has notify the petitioner on Form I-797 whenever a visa petition or an extension of a visa petition is approved under the P classification. The beneficiary of a P petition who does not require a nonimmigrant visa may present a copy of the approved notice at a Port-of-Entry to facilitate entry into the United States. A beneficiary who is required to present a

visa for admission, and whose visa expired before the date of his or her intended return, may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and present during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(18) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(P) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term “abroad” means the alien’s last place of residence prior to his or her entry into the United States.

(q) *Cultural visitors*—(1)(i) *International cultural exchange visitors program.* Paragraphs (q)(2) through (q)(11) of this section provide the rules governing nonimmigrant aliens who are visiting the United States temporarily in an international cultural exchange visitors program (Q-1).

(ii) *Irish peace process cultural and training program.* Paragraph (q)(15) of this section provides the rules governing nonimmigrant aliens who are visiting the United States temporarily under the Irish peace process cultural and training program (Q-2) and their dependents (Q-3).

(iii) *Definitions.* As used in this section:

Country of nationality means the country of which the participant was a national at the time of the petition seeking international cultural exchange visitor status for him or her.

Doing business means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

Duration of program means the time in which a qualified employer is conducting an approved international cultural exchange program in the manner as established by the employer’s petition for program approval, provided that the period of time does not exceed 15 months.

International cultural exchange visitor means an alien who has a residence in a foreign country which he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

Petitioner means the employer or its designated agent who has been employed by the qualified employer on a permanent basis in an executive or managerial capacity. The designated agent must be a United States citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence status under sections 210 or 245A of the Act.

Qualified employer means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the Attorney General in accordance with the provisions of section 101(a)(15)(Q)(i) of the Act.

(2) *Admission of international cultural exchange visitor*—(i) *General.* A nonimmigrant alien may be authorized to enter the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien’s nationality. The period of admission is the duration of the approved international cultural exchange program or fifteen (15) months, whichever is shorter. A nonimmigrant alien admitted under this provision is classifiable as an international cultural exchange visitor in Q-1 status.

(ii) *Limitation on admission.* Any alien who has been admitted into the United States as an international cultural exchange visitor under section 101(a)(15)(Q)(i) of the Act shall not be

readmitted in Q-1 status unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for pleasure or business during the immediate prior year do not break the continuity of the one-year foreign residency.

(3) *International cultural exchange program*—(i) *General*. A United States employer shall petition the Attorney General on Form I-129, Petition for a Non-immigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified non-immigrant aliens to be admitted in Q-1 status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

(ii) *Program validity*. Each petition for an international cultural exchange program will be approved for the duration of the program, which may not exceed 15 months, plus 30 days to allow time for the participants to make travel arrangements. Subsequent to the approval of the initial petition, a new petition must be filed each time the qualified employer wishes to bring in additional cultural visitors. A qualified employer may replace or substitute a participant named on a previously approved petition for the remainder of the program in accordance with paragraph (q)(6) of this section. The replacement or substituting alien may be admitted in Q-1 status until the expiration date of the approved petition.

(iii) *Requirements for program approval*. An international cultural exchange program must meet all of the following requirements:

(A) *Accessibility to the public*. The international cultural exchange pro-

gram must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component*. The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component*. The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

(iv) *Requirements for international cultural exchange visitors*. To be eligible for international cultural exchange visitor status, an alien must be a bona fide nonimmigrant who:

(A) Is at least 18 years of age at the time the petition is filed;

(B) Is qualified to perform the service or labor or receive the type of training stated in the petition;

(C) Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and

(D) Has resided and been physically present outside of the United States for the immediate prior year, if he or she

was previously admitted as an international cultural exchange visitor.

(4) *Supporting documentation—(i) Documentation by the employer.* To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

(A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;

(B) Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with the Immigration and Naturalization Service;

(C) Is actively doing business in the United States;

(D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and

(E) Has the financial ability to remunerate the participant(s).

(ii) *Certification by petitioner.* (A) The petitioner must give the date of birth, country of nationality, level of education, position title, and a brief job description for each international cultural exchange visitor included in the petition. The petitioner must verify and certify that the prospective participants are qualified to perform the service or labor, or receive the type of training, described in the petition.

(B) The petitioner must report the international cultural exchange visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.

(iii) Supporting documentation as prescribed in paragraphs (q)(4)(i) and (q)(4)(ii) of this section must accompany a petition filed on Form I-129 in all cases except where the employer files multiple petitions in the same calendar year. When petitioning to repeat a previously approved international cultural exchange program, a copy of the initial program approval notice may be submitted in lieu of the documentation required under paragraph (q)(4)(i) of this section. The Service

will request additional documentation only when clarification is needed.

(5) *Filing of petitions for international cultural exchange visitor program—(i) General.* A United States employer seeking to bring in international cultural exchange visitors must file a petition on Form I-129, Petition for a Nonimmigrant Worker, with the applicable fee, along with appropriate documentation. A new petition on Form I-129, with the applicable fee, must be filed with the appropriate service center each time a qualified employer wants to bring in additional international cultural exchange visitors. Each person named on an approved petition will be admitted only for the duration of the approved program. Replacement or substitution may be made for any person named on an approved petition as provided in paragraph (q)(6) of this section, but only for the remainder of the approved program.

(ii) *Petition for multiple participants.* The petitioner may include more than one participant on the petition. The petitioner shall include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the United States consulate at which each participant will apply for a Q-1 visa. For participants who are visa-exempt under 8 CFR 212.1(a), the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.

(iii) *Service, labor, or training in more than one location.* A petition which requires the international cultural exchange visitor to engage in employment or training (with the same employer) in more than one location must include an itinerary with the dates and locations of the services, labor, or training.

(iv) *Services, labor, or training for more than one employer.* If the international cultural exchange visitor will perform services or labor for, or receive training from, more than one employer, each employer must file a separate petition. The international cultural exchange visitor may work part-time for multiple employers provided that each

employer has an approved petition for the alien.

(v) *Change of employers.* If an international cultural exchange visitor is in the United States under section 101(a)(15)(Q)(i) of the Act and decides to change employers, the new employer must file a petition. However, the total period of time the international cultural exchange visitor may stay in the United States remains limited to fifteen (15) months.

(6) *Substitution or replacements of participants in an international cultural exchange visitor program.* The petitioner may substitute for or replace a person named on a previously approved petition for the remainder of the program without filing a new Form I-129. The substituting international cultural exchange visitor must meet the qualification requirements prescribed in paragraph (q)(3)(iv) of this section. To request substitution or replacement, the petitioner shall, by letter, notify the consular office at which the alien will apply for a visa or, in the case of visa-exempt aliens, the Service office at the port of entry where the alien will apply for admission. A copy of the petition's approval notice must be included with the letter. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective international cultural exchange visitor and must certify that each is qualified to perform the service or labor or receive the type of training described in the approved petition. The petitioner must also indicate each international cultural exchange visitor's wages and certify that the international cultural exchange visitor is offered wages and working conditions comparable to those accorded to local domestic workers in accordance with paragraph (q)(11)(ii) of this section.

(7) *Approval of petition for international cultural exchange visitor program.* (i) The director shall consider all the evidence submitted and request other evidence as he or she may deem necessary.

(ii) The director shall notify the petitioner and the appropriate United States consulate(s) of the approval of a petition. For participants who are visa-exempt under 8 CFR 212.1(a), the direc-

tor shall give notice of the approval to the director of the port of entry at which each such participant will apply for admission to the United States. The notice of approval shall include the name of the international cultural exchange visitors, their classification, and the petition's period of validity.

(iii) An approved petition for an alien classified under section 101(a)(15)(Q)(i) of the Act is valid for the length of the approved program or fifteen (15) months, whichever is shorter.

(iv) A petition shall not be approved for an alien who has an aggregate of fifteen (15) months in the United States under section 101(a)(15)(Q)(i) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year.

(8) *Denial of the petition—*(i) *Notice of denial.* The petitioner shall be notified of the denial of a petition, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter.

(ii) *Multiple participants.* A petition for multiple international cultural exchange visitors may be denied in whole or in part.

(9) *Revocation of approval of petition—*(i) *General.* The petitioner shall immediately notify the appropriate Service center of any changes in the employment of a participant which would affect eligibility under section 101(a)(15)(Q)(i) of the Act.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the qualifying employer goes out of business, files a written withdrawal of the petition, or terminates the approved international cultural exchange program prior to its expiration date. No further action or notice by the Service is necessary in the case of automatic revocation. In any other case, the Service shall follow the revocation procedures in paragraphs (q)(9) (iii) through (v) of this section.

(iii) *Revocation on notice.* The director shall send the petitioner a notice of intent to revoke the petition in whole or in part if he or she finds that:

(A) The international cultural exchange visitor is no longer employed by the petitioner in the capacity specified in the petition, or if the international cultural exchange visitor is no

longer receiving training as specified in the petition;

(B) The statement of facts contained in the petition was not true and correct;

(C) The petitioner violated the terms and conditions of the approved petition; or

(D) The Service approved the petition in error.

(iv) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the period of time allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(v) *Appeal of a revocation of a petition.* Revocation with notice of a petition in whole or in part may be appealed to the Associate Commissioner for Examinations under part 103 of this chapter. Automatic revocation may not be appealed.

(10) *Extension of stay.* An alien's total period of stay in the United States under section 101(a)(15)(Q)(i) of the Act cannot exceed fifteen (15) months. The authorized stay of an international cultural exchange visitor may be extended within the 15-month limit if he or she is the beneficiary of a new petition filed in accordance with paragraph (q)(3) of this section. The new petition, if filed by the same employer, should include a copy of the previous petition's approval notice and a letter from the petitioner indicating any terms and conditions of the previous petition that have changed.

(11) *Employment provisions—(i) General.* An alien classified under section 101(a)(15)(Q)(i) of the Act may be employed only by the qualified employer through which the alien attained Q-1 nonimmigrant status. An alien in this class is not required to apply for an employment authorization document. Employment outside the specific program violates the terms of the alien's

Q-1 nonimmigrant status within the meaning of section 237(a)(1)(C)(i) of the Act.

(ii) *Wages and working conditions.* The wages and working conditions of an international cultural exchange visitor must be comparable to those accorded to domestic workers similarly employed in the geographical area of the alien's employment. The employer must certify on the petition that such conditions are met as in accordance with paragraph (q)(4)(iii)(B) of this section.

(12)–(14) [Reserved]

(15) *Irish peace process cultural and training program visitors (Q-2) and their dependents (Q-3)—(i) General.* An Irish Peace Process Cultural and Training Program (IPPCTP) visitor is a non-immigrant alien coming to the United States temporarily to gain or upgrade work skills through training and temporary employment and to experience living in a diverse and peaceful environment.

(ii) *What are the requirements for participation?* (A) The principal alien must have been physically resident in either Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland, for at least 3 months immediately preceding application to the program and must show that he or she has no intention of abandoning this residence.

(B) The principal alien must be between the ages of 18 and 35.

(C) The principal alien must:

(1) Be unemployed for at least 3 months, or have completed or currently be enrolled in a training/employment program sponsored by the Training and Employment Agency of Northern Ireland (T&EA) or by the Training and Employment Authority of Ireland (FAS), or by other such publicly funded programs, or have been made redundant from employment (*i.e.*, lost their job), or have received a notice of redundancy (termination of employment); or

(2) Be a currently employed person whose employer has nominated him/her to participate in this program for additional training or job experience that is to benefit both the participant and his/her employer upon returning home.

Department of Homeland Security

§214.2

(D) The principal alien must intend to come to the United States temporarily, for a period not to exceed 36 months, in order to obtain training, employment, and the experience of co-existence and conflict resolution in a diverse society.

(iii) *Are there any limitations on admissions?* (A) No more than 4,000 participants, including spouses and any minor children of principal aliens, may be admitted annually for 3 consecutive program years, beginning with FY 2000 (October 1, 1999, through September 30, 2000).

(B) For each alien admitted under section 101(a)(15)(Q)(ii) of the Act, the number of aliens admitted under section 101(a)(15)(H)(ii)(b) of the Act is reduced by one for that fiscal year or the subsequent fiscal year.

(C) This program expires on October 1, 2005.

(iv) *What are the requirements for initial admission to the United States?* (A) Principal aliens, their spouses, and minor children of principal aliens must present valid passports and either a Q-2 or Q-3 visa at the time of inspection.

(B) Initial admission for those principal and dependent aliens in this program who received their visas at either the U.S. Embassy in Dublin or the U.S. Consulate in Belfast must take place at the Service's Pre-Flight Inspection facilities at either the Shannon or Dublin airports in the Republic of Ireland.

(C) The principal alien will be required to present a Certification Letter issued by the Department of State's (DOS') Program Administrator documenting him or her as an individual selected for participation in the IPPCTP. Eligible dependents may be requested to present written documentation certifying their relationship to the principal.

(v) *May the principal alien and dependents make brief visits outside the United States?* (A) The principal alien, spouse, and any minor children of the principal alien may make brief departures, for periods not to exceed 3 consecutive months, and may be readmitted without having to obtain a new visa. However, such periods of time spent outside the United States will not be added to the end of stay, which is not to exceed

a total of 3 years from the initial date of entry of the principal alien.

(B) Those participants or dependents who remain outside the United States in excess of 3 consecutive months will not be readmitted by the Service on their initial Q-2 or Q-3 visa. Instead, any such individual and eligible dependents wishing to rejoin the program will be required to reapply to the program and be in receipt of a new Q-2 or Q-3 visa and a Certification Letter issued by the DOS' Program Administrator, prior to any subsequent admission to the United States.

(vi) *How long may a Q-2 or Q-3 visa holder remain in the United States under this program?* (A) The principal alien and any accompanying, or following-to-join, spouse or minor children of the principal alien are admitted for the duration of the principal alien's planned cultural and training program or 36 months, whichever is shorter.

(B) Those participants and eligible dependents admitted for specific periods less than 36 months may extend their period of stay through the Service so that their total period of stay is 36 months, provided the extension of stay is related to employment or training certified by the DOS' Program Administrator.

(vii) *How is employment authorized under this program?* (A) Following endorsement of his/her Form I-94, Arrival-Departure Record, by a Service officer, any principal alien admitted under section 101(a)(15)(Q)(ii) of the Act is permitted to work for an employer or employers listed on the Certification Letter issued by the DOS' Program Administrator.

(B) The accompanying spouse and minor children of the principal alien may not accept employment, unless the spouse has also been designated as a principal alien (Q-2) in this program and has been issued a Certification Letter by the DOS' Program Administrator.

(viii) *May the principal alien change employers?* Principal aliens wishing to change employers must request such a change through the DOS' Program Administrator to the Service. Following review and consideration of the request by the Service, the Service will inform the participant of the decision. The

Service will grant such approval of employers only if the new employer has been approved by DOS in accordance with its regulations and such approval is communicated to the Service through the DOS' Program Administrator. If approved, the participant's Form I-94 will be annotated to show the new employer. If denied, there is no appeal under this section.

(ix) *May the principal alien hold other jobs during his/her U.S. visit?* No; any principal alien classified as an Irish peace process cultural and training program visitor may only engage in employment that has been certified by the DOS' Program Administrator and approved by the DOS or the Service as endorsed on the Form I-94. An alien who engages in unauthorized employment violates the terms of the Q-2 visa and will be considered to have violated section 237(a)(1)(C)(i) of the Act.

(x) *What happens if a principal alien loses his/her job?* A principal alien, who loses his or her job, will have 30 days from his/her last date of employment to locate appropriate employment or training, to have the job offer certified by the DOS' Program Administrator in accordance with the DOS' regulations and to have it approved by the Service. If appropriate employment or training cannot be found within this 30-day-period, the principal alien and any accompanying family members will be required to depart the United States.

(r) *Religious workers.* This paragraph governs classification of an alien as a nonimmigrant religious worker (R-1).

(1) To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph

(r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

(2) An alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations.

(3) *Definitions.* As used in this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Minister means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

Department of Homeland Security

§214.2

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Petition means USCIS Form I-129, Petition for a Nonimmigrant Worker, a successor form, or any other form as may be prescribed by USCIS, along with a supplement containing attestations required by this section, the fee specified in 8 CFR 103.7(b)(1), and supporting evidence required by this part.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

(A) A recognized common creed or statement of faith shared among the denomination's members;

(B) A common form of worship;

(C) A common formal code of doctrine and discipline;

(D) Common religious services and ceremonies;

(E) Common established places of religious worship or religious congregations; or

(F) Comparable indicia of a bona fide religious denomination.

Religious occupation means an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

(4) *Requirements for admission/change of status; time limits*—(i) *Principal applicant (R-1 nonimmigrant)*. If otherwise admissible, an alien who meets the requirements of section 101(a)(15)(R) of the Act may be admitted as an R-1 alien or changed to R-1 status for an initial period of up to 30 months from date of initial admission. If visa-exempt, the alien must present original documentation of the petition approval.

(ii) *Spouse and children (R-2 status)*. The spouse and unmarried children under the age of 21 of an R-1 alien may be accompanying or following to join the R-1 alien, subject to the following conditions:

(A) R-2 status is granted for the same period of time and subject to the same limits as the principal, regardless of the time such spouse and children may have spent in the United States in R-2 status;

(B) Neither the spouse nor children may accept employment while in the United States in R-2 status; and

(C) The primary purpose of the spouse or children coming to the United States must be to join or accompany the principal R-1 alien.

(5) *Extension of stay or readmission.* An R-1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R-1 stay or readmission in R-1 status for the validity period of the petition, up to 30 months, provided the total period of time spent in R-1 status does not exceed a maximum of five years. A Petition for a Nonimmigrant Worker to request an extension of R-1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR 103.7(b)(1), and the supporting evidence, in accordance with the applicable form instructions.

(6) *Limitation on total stay.* An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

(7) *Jurisdiction and procedures for obtaining R-1 status.* An employer in the United States seeking to employ a religious worker, by initial petition or by change of status, shall file a petition in accordance with the applicable form instructions.

(8) *Attestation.* An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The

prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;

(iii) The number of members of the prospective employer's organization;

(iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;

(viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;

(ix) That the alien will be employed at least 20 hours per week;

(x) The specific location(s) of the proposed employment; and

(xi) That the alien will not be engaged in secular employment.

(9) *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

Department of Homeland Security

§214.2

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the Internal Revenue Code, as something other than a religious organization;

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

(10) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

(11) *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

(ii) *Self support.* (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

(2) Missionary workers are traditionally uncompensated;

(3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

(1) That the organization has an established program for temporary, uncompensated missionary work;

(2) That the denomination maintains missionary programs both in the United States and abroad;

(3) The religious worker's acceptance into the missionary program;

(4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and

(5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

(12) *Evidence of previous R-1 employment.* Any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

(iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

(13) *Change or addition of employers.* An R-1 alien may not be compensated

for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 CFR 103.7(b)(1).

(14) *Employer obligations.* When an R-1 alien is working less than the required number of hours or has been released from or has otherwise terminated employment before the expiration of a period of authorized R-1 stay, the R-1 alien's approved employer must notify DHS within 14 days using procedures set forth in the instructions to the petition or otherwise prescribed by USCIS on the USCIS Internet Web site at www.uscis.gov.

(15) *Nonimmigrant intent.* An alien classified under section 101(a)(15)(R) of the Act shall maintain an intention to depart the United States upon the expiration or termination of R-1 or R-2 status. However, a nonimmigrant petition, application for initial admission, change of status, or extension of stay in R classification may not be denied solely on the basis of a filed or an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

(16) *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of

such inspection will be a condition for approval of any petition.

(17) *Denial and appeal of petition.* USCIS will provide written notification of the reasons for the denial under 8 CFR 103.3(a)(1). The petitioner may appeal the denial under 8 CFR 103.3.

(18) *Revocation of approved petitions—*(i) *Director discretion.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner ceases to exist or files a written withdrawal of the petition.

(iii) *Revocation on notice—*(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated terms and conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or

(5) The approval of the petition violated paragraph (r) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(19) *Appeal of a revocation of a petition.* A petition that has been revoked on notice in whole or in part may be appealed under 8 CFR 103.3. Automatic revocations may not be appealed.

(s) *NATO nonimmigrant aliens—*(1) *General—*(i) *Background.* The North Atlantic Treaty Organization (NATO) is constituted of nations signatory to the North Atlantic Treaty. The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed in London, June 1951 (NATO Status of Forces Agree-

ment), is the agreement between those nations that defines the terms of the status of their armed forces while serving abroad.

(A) Nonimmigrant aliens classified as NATO-1 through NATO-5 are officials, employees, or persons associated with NATO, and members of their immediate families, who may enter the United States in accordance with the NATO Status of Forces Agreement or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol). The following specific classifications shall be assigned to such NATO nonimmigrants:

(1) NATO-1—A principal permanent representative of a Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and the members of the immediate family of such persons.

(2) NATO-2—Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and the members of the immediate family of such persons; dependents of members of a force entering in accordance with the provisions of the NATO Status of Forces Agreement or in accordance with the provisions of the Paris Protocol; members of such a force, if issued visas.

(3) NATO-3—Official clerical staff accompanying a representative of a Member State to NATO (including any of its subsidiary bodies) and the members of the immediate family of such persons.

(4) NATO-4—Officials of NATO (other than those classifiable under NATO-1) and the members of their immediate family

(5) NATO-5—Experts, other than NATO officials classifiable under NATO-4, employed on missions on behalf of NATO and their dependents.

(B) Nonimmigrant aliens classified as NATO-6 are civilians, and members of their immediate families, who may enter the United States as employees of a force entering in accordance with

the NATO Status of Forces Agreement, or as members of a civilian component attached to or employed by NATO Headquarters, Supreme Allied Commander, Atlantic (SACLANT), set up pursuant to the Paris Protocol.

(C) Nonimmigrant aliens classified as NATO-7 are attendants, servants, or personal employees of nonimmigrant aliens classified as NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6, who are authorized to work only for the NATO-1 through NATO-6 nonimmigrant from whom they derive status, and members of their immediate families.

(ii) *Admission and extension of stay.* NATO-1, NATO-2, NATO-3, NATO-4, and NATO-5 aliens are normally exempt from inspection under 8 CFR 235.1(c). NATO-6 aliens may be authorized admission for duration of status. NATO-7 aliens may be admitted for not more than 3 years and may be granted extensions of temporary stay in increments of not more than 2 years. In addition, an application for extension of temporary stay for a NATO-7 alien must be accompanied by a statement signed by the employing official stating that he or she intends to continue to employ the NATO-7 applicant, describing the work the applicant will perform, and acknowledging that this is, and will be, the sole employment of the NATO-7 applicant.

(2) *Definition of a dependent of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6.* For purposes of employment in the United States, the term *dependent* of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien, as used in this section, means any of the following immediate members of the family habitually residing in the same household as the NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States:

- (i) Spouse;
- (ii) Unmarried children under the age of 21;
- (iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;
- (iv) Unmarried sons or daughters under the age of 25 who are in full-time

attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreements do not specify under the age of 23 as the maximum age for employment of such sons and daughters;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain, or re-establish their own households. The Service may require medical certification(s) as it deems necessary to document such mental or physical disability.

(3) *Dependent employment requirements based on formal bilateral employment agreements and informal de facto reciprocal arrangements—(i) Formal bilateral employment agreements.* The Department of State's Family Liaison office (FLO) shall maintain all listing of NATO Member States which have entered into formal bilateral employment agreements that include NATO personnel. A dependent of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States may accept, or continue in, unrestricted employment based on such formal bilateral agreement upon favorable recommendation by SACLANT, pursuant to paragraph (s)(5) of this section, and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (s)(5) of this section.

(ii) *Informal de facto reciprocal arrangements.* For purposes of this section, an informal de facto reciprocal arrangement exists when the Office of the Secretary of Defense, Foreign Military Rights Affairs (OSD/FMRA), certifies, with State Department concurrence, that a NATO Member State allows appropriate employment in the local economy for dependents of members of the force and members of the civilian component of the United States assigned to duty in the NATO Member State. OSD/FMRA and State's FLO shall maintain a listing of countries

with which such reciprocity exists. Dependents of a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 principal alien assigned to official duty in the United States may be authorized to accept, or continue in, employment based upon informal de facto arrangements upon favorable recommendation by SACLANT, pursuant to paragraph (s)(5) of this section, and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the application procedures set forth in paragraph (s)(5) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent requesting employment are maintaining NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 status, as appropriate;

(B) The principal alien's total length of assignment in the United States is expected to last more than 6 months;

(C) Employment of a similar nature for dependents of members of the force and members of the civilian component of the United States assigned to official duty in the NATO Member State employing the principal alien is not prohibited by the NATO Member State;

(D) The proposed employment is not in an occupation listed in the Department of Labor's Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified United States workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 dependents who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; or who cannot establish

that they have paid taxes and social security on income from current or previous United States employment.

(iii) State's FLO shall inform the Service, by contacting Headquarters, Adjudications, Attention: Chief, Business and Trade Services Branch, 425 I Street, NW., Washington, DC 20536, of any additions or changes to the formal bilateral employment agreements and informal de facto reciprocal arrangements.

(4) *Applicability of a formal bilateral agreement or an informal de facto arrangement for NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 dependents.* The applicability of a formal bilateral agreement shall be based on the NATO Member State which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the NATO Member State which employs the principal alien, and the principal alien also must be a national of the NATO Member State which employs him or her in the United States. Dependents of SACLANT employees receive bilateral agreement or de facto arrangement employment privileges as appropriate based upon the nationality of the SACLANT employee (principal alien).

(5) *Application procedures.* The following procedures are required for dependent employment applications under bilateral agreements and de facto arrangements:

(i) The dependent of a NATO alien shall submit a complete application for employment authorization, including Form I-765 and Form I-566, completed in accordance with the instructions on, or attached to, those forms. The complete application shall be submitted to SACLANT for certification of the Form I-566 and forwarding to the Service.

(ii) In a case where a bilateral dependent employment agreement containing a numerical limitation on the number of dependents authorized to work is applicable, the certifying officer of SACLANT shall not forward the application for employment authorization to the Service unless, following consultation with State's Office of Protocol, the certifying officer has confirmed that this numerical limitation

has not been reached. The countries with such limitations are indicated on the bilateral/de facto dependent employment listing issued by State's FLO.

(iii) SACLANT shall keep copies of each application and certified Form I-566 for 3 years from the date of the certification.

(iv) A dependent applying under the terms of a de facto arrangement must also attach a statement from the prospective employer which includes the dependent's name, a description of the position offered, the duties to be performed, the hours to be worked, the salary offered, and verification that the dependent possesses the qualifications for the position.

(v) A dependent applying under paragraph (s)(2) (iii) or (iv) of this section must also submit a certified statement from the post-secondary educational institution confirming that he or she is pursuing studies on a full-time basis.

(vi) A dependent applying under paragraph (s)(2)(v) of this section must also submit medical certification regarding his or her condition. The certification should identify both the dependent and the certifying physician, give the physician's phone number, identify the condition, describe the symptoms, provide a clear prognosis, and certify that the dependent is unable to maintain a home of his or her own.

(vii) The Service may require additional supporting documentation, but only after consultation with SACLANT.

(6) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this paragraph shall be granted in increments of not more than 3 years.

(7) *Income tax and Social Security liability.* Dependents who are granted employment authorization under this paragraph are responsible for payment of all Federal, state, and local income taxes, employment and related taxes and Social Security contributions on any remuneration received.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this paragraph.

(9) *Unauthorized employment.* An alien classified as a NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7 who is not a NATO principal alien and who engages in employment outside the scope of, or in a manner contrary to, this paragraph may be considered in violation of status pursuant to section 237(a)(1)(C)(i) of the Act. A NATO principal alien in those classifications who engages in employment outside the scope of his or her official position may be considered in violation of status pursuant to section 237(a)(1)(C)(i) of the Act.

(t) *Alien witnesses and informants—(1) Alien witness or informant in criminal matter.* An alien may be classified as an S-5 alien witness or informant under the provisions of section 101(a)(15)(S)(i) of the Act if, in the exercise of discretion pursuant to an application on Form I-854 by an interested federal or state law enforcement authority ("LEA"), it is determined by the Commissioner that the alien:

(i) Possesses critical reliable information concerning a criminal organization or enterprise;

(ii) Is willing to supply, or has supplied, such information to federal or state LEA; and

(iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

(2) *Alien witness or informant in counterterrorism matter.* An alien may be classified as an S-6 alien counterterrorism witness or informant under the provisions of section 101(a)(15)(S)(ii) of the Act if it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested federal LEA, that the alien:

(i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation;

(ii) Is willing to supply or has supplied such information to a federal LEA;

(iii) Is in danger or has been placed in danger as a result of providing such information; and

(iv) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

(3) *Spouse, married and unmarried sons and daughters, and parents of alien witness or informant in criminal or counterterrorism matter.* An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification (S-7) when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by, with respect to paragraph (t)(1) of this section, the Commissioner, or, with respect to paragraph (t)(2) of this section, the Secretary of State and the Commissioner acting jointly, consider it to be appropriate. A nonimmigrant in such derivative S-7 classification shall be subject to the same period of admission, limitations, and restrictions as the alien witness or informant and must be identified by the requesting LEA on the application Form I-854 in order to qualify for S nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification.

(4) *Request for S nonimmigrant classification.* An application on Form I-854, requesting S nonimmigrant classification for a witness or informant, may only be filed by a federal or state LEA (which shall include a federal or state court or a United States Attorney's Office) directly in need of the information to be provided by the alien witness or informant. The completed application is filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications that fall within the numerical limitation to the Commissioner, Immigration and Naturalization Service, for approval, pursuant to the following process.

(i) *Filing request.* For an alien to qualify for status as an S nonimmigrant, S nonimmigrant classification must be requested by an LEA. The LEA shall recommend an alien for S nonimmigrant classification by: Completing Form I-854, with all necessary endorsements and attachments, in accordance with the instructions on, or

attached to, that form, and agreeing, as a condition of status, that no promises may be, have been, or will be made by the LEA that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to that of lawful permanent resident, or otherwise attempt to remain beyond a 3-year period other than by the means authorized by section 101(a)(15)(S) of the Act. The alien, including any derivative beneficiary who is 18 years or older, shall sign a statement, that is part of or affixed to Form I-854, acknowledging awareness that he or she is restricted by the terms of S nonimmigrant classification to the specific terms of section 101(a)(15)(S) of the Act as the exclusive means by which he or she may remain permanently in the United States.

(A) *District director referral.* Any district director or Service officer who receives a request by an alien, an eligible LEA, or other entity seeking S nonimmigrant classification shall advise the requestor of the process and the requirements for applying for S nonimmigrant classification. Eligible LEAs seeking S nonimmigrant classification shall be referred to the Commissioner.

(B) *United States Attorney certification.* The United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a request for S nonimmigrant classification must certify and endorse the application on Form I-854 and agree that no promises may be, have been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

(C) *LEA certification.* LEA certifications on Form I-854 must be made at the seat-of-government level, if federal, or the highest level of the state LEA involved in the matter. With respect to the alien for whom S nonimmigrant classification is sought, the LEA shall provide evidence in the form of attachments establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, all conduct or

conditions which may constitute a ground or grounds of excludability, and all factors and considerations warranting a favorable exercise of discretionary waiver authority by the Attorney General on the alien's behalf. The attachments submitted with a request for S nonimmigrant classification may be in the form of affidavits, statements, memoranda, or similar documentation. The LEA shall review Form I-854 for accuracy and ensure the alien understands the certifications made on Form I-854.

(D) *Filing procedure.* Upon completion of Form I-854, the LEA shall forward the form and all required attachments to the Assistant Attorney General, Criminal Division, United States Department of Justice, at the address listed on the form.

(ii) *Assistant Attorney General, Criminal Division review—(A) Review of information.* Upon receipt of a complete application for S nonimmigrant classification on Form I-854, with all required attachments, the Assistant Attorney General, Criminal Division, shall ensure that all information relating to the basis of the application, the need for the witness or informant, and grounds of excludability under section 212 of the Act has been provided to the Service on Form I-854, and shall consider the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No application may be acted on by the Assistant Attorney General unless the eligible LEA making the request has proceeded in accordance with the instructions on, or attached to, Form I-854 and agreed to all provisions therein.

(B) *Advisory panel.* Where necessary according to procedures established by the Assistant Attorney General, Criminal Division, an advisory panel, composed of representatives of the Service, Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, and the Department of State, and those representatives of other LEAs, including state and federal courts designated by the Attorney General, will review the completed application and submit a recommendation to the Assistant Attorney General, Criminal Division, regarding requests for S nonimmigrant

classification. The function of this advisory panel is to prioritize cases in light of the numerical limitation in order to determine which cases will be forwarded to the Commissioner.

(C) *Assistant Attorney General certification.* The certification of the Assistant Attorney General, Criminal Division, to the Commissioner recommending approval of the application for S nonimmigrant classification shall contain the following:

(1) All information and attachments that may constitute, or relate to, a ground or grounds of excludability under section 212(a) of the Act;

(2) Each section of law under which the alien appears to be inadmissible;

(3) The reasons that waiver(s) of inadmissibility are considered to be justifiable and in the national interest;

(4) A detailed statement that the alien is eligible for S nonimmigrant classification, explaining the nature of the alien's cooperation with the government and the government's need for the alien's presence in the United States;

(5) The intended date of arrival;

(6) The length of the proposed stay in the United States;

(7) The purpose of the proposed stay; and

(8) A statement that the application falls within the statutorily specified numerical limitation.

(D) *Submission of certified requests for S nonimmigrant classification to Service.*

(1) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner only qualified applications for S-5 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph and that fall within the annual numerical limitation.

(2) The Assistant Attorney General Criminal Division, shall forward to the Commissioner applications for S-6 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph, certified by the Secretary of State or eligibility for S-6 classification, and that fall within the annual numerical limitation.

(5) *Decision on application.* (i) The Attorney General's authority to waive grounds of excludability pursuant to

Department of Homeland Security

§214.2

section 212 of the Act is delegated to the Commissioner and shall be exercised with regard to S nonimmigrant classification only upon the certification of the Assistant Attorney General, Criminal Division. Such certification is nonreviewable as to the matter's significance, importance, and/or worthwhileness to law enforcement. The Commissioner shall make the final decision to approve or deny a request for S nonimmigrant classification certified by the Assistant Attorney General, Criminal Division.

(ii) *Decision to approve application.* Upon approval of the application on Form I-854, the Commissioner shall notify the Assistant Attorney General, Criminal Division, the Secretary of State, and Service officers as appropriate. Admission shall be authorized for a period not to exceed 3 years.

(iii) *Decision to deny application.* In the event the Commissioner decides to deny an application for S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

(6) *Submission of requests for S nonimmigrant visa classification to Secretary of State.* No request for S nonimmigrant visa classification may be presented to the Secretary of State unless it is approved and forwarded by the Commissioner.

(7) *Conditions of status.* An alien witness or informant is responsible for certifying and fulfilling the terms and conditions specified on Form I-854 as a condition of status. The LEA that assumes responsibility for the S nonimmigrant must:

(i) Ensure that the alien:

(A) Reports quarterly to the LEA on his or her whereabouts and activities, and as otherwise specified on Form I-854 or pursuant to the terms of his or her S nonimmigrant classification;

(B) Notifies the LEA of any change of home or work address and phone numbers or any travel plans;

(C) Abides by the law and all specified terms, limitations, or restrictions on the visa, Form I-854, or any waivers pursuant to classification; and

(D) Cooperates with the responsible LEA in accordance with the terms of his or her classification and any restrictions on Form I-854;

(ii) Provide the Assistant Attorney General, Criminal Division, with the name of the control agent on an ongoing basis and provide a quarterly report indicating the whereabouts, activities, and any other control information required on Form I-854 or by the Assistant Attorney General;

(iii) Report immediately to the Service any failure on the alien's part to:

(A) Report quarterly;

(B) Cooperate with the LEA;

(C) Comply with the terms and conditions of the specific S nonimmigrant classification; or

(D) Refrain from criminal activity that may render the alien deportable, which information shall also be forwarded to the Assistant Attorney General, Criminal Division; and

(iv) Report annually to the Assistant Attorney General, Criminal Division, on whether the alien's S nonimmigrant classification and cooperation resulted in either:

(A) A successful criminal prosecution or investigation or the failure to produce a successful resolution of the matter; or

(B) The prevention or frustration of terrorist acts or the failure to prevent such acts.

(v) Assist the alien in his or her application to the Service for employment authorization.

(8) *Annual report.* The Assistant Attorney General, Criminal Division, in consultation with the Commissioner, shall compile the statutorily mandated annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

§214.2

8 CFR Ch. I (1–16 Edition)

(9) *Admission.* The responsible LEA will coordinate the admission of an alien in S nonimmigrant classification with the Commissioner as to the date, time, place, and manner of the alien's arrival.

(10) *Employment.* An alien classified under section 101(a)(15)(S) of the Act may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with fee, in accordance with the instructions on, or attached to, that form pursuant to §274a.12(c)(21) of this chapter.

(11) *Failure to maintain status.* An alien classified under section 101(a)(15)(S) of the Act shall abide by all the terms and conditions of his or her S nonimmigrant classification imposed by the Attorney General. If the terms and conditions of S nonimmigrant classification will not be or have not been met, or have been violated, the alien is convicted of any criminal offense punishable by a term of imprisonment of 1 year or more, is otherwise rendered deportable, or it is otherwise appropriate or in the public interest to do so, the Commissioner shall proceed to deport an alien pursuant to the terms of 8 CFR 242.26. In the event the Commissioner decides to deport an alien witness or informant in S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(12) *Change of classification.* (i) An alien in S nonimmigrant classification is prohibited from changing to any other nonimmigrant classification.

(ii) An LEA may request that any alien lawfully admitted to the United States and maintaining status in accordance with the provisions of §248.1

of this chapter, except for those aliens enumerated in 8 CFR 248.2, have his or her nonimmigrant classification changed to that of an alien classified pursuant to section 101(a)(15)(S) of the Act as set forth in 8 CFR 248.3(h).

(u) [Reserved]

(v) *Certain spouses and children of LPRs.* Section 214.15 of this chapter provides the procedures and requirements pertaining to V nonimmigrant status.

(w) *CNMI-Only Transitional Worker (CW-1).* (1) *Definitions.* The following definitions apply to petitions for and maintenance of CW status in the Commonwealth of the Northern Mariana Islands (the CNMI or the Commonwealth):

(i) *Direct Guam transit* means travel from the CNMI to the Philippines by an alien in CW status, or from the Philippines to the CNMI by an alien with a valid CW visa, on a direct itinerary involving a flight stopover or connection in Guam (and no other place) within 8 hours of arrival in Guam, without the alien leaving the Guam airport.

(ii) *Doing business* means the regular, systematic, and continuous provision of goods or services by an employer as defined in this paragraph and does not include the mere presence of an agent or office of the employer in the CNMI.

(iii) *Employer* means a person, firm, corporation, contractor, or other association, or organization which:

(A) Engages a person to work within the CNMI; and

(B) Has or will have an employer-employee relationship with the CW-1 nonimmigrant being petitioned for.

(iv) *Employer-employee relationship* means that the employer will hire, pay, fire, supervise, and control the work of the employee.

(v) *Lawfully present in the CNMI* means that the alien:

(A) At the time the application for CW status is filed, is an alien lawfully present in the CNMI under 48 U.S.C. 1806(e); or

(B) Was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted or paroled as a visitor for business or pleasure (B-1 or B-2, under any visa-free travel provision or parole of

Department of Homeland Security

§ 214.2

certain visitors from Russia and the People's Republic of China), and remains in a lawful immigration status.

(vi) *Legitimate business* means a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit, or is a governmental, charitable or other validly recognized nonprofit entity. The business must meet applicable legal requirements for doing business in the CNMI. A business will not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law. DHS will determine whether a business is legitimate.

(vii) *Minor child* means a child as defined in section 101(b)(1) of the Act who is under 18 years of age.

(viii) *Numerical limitation* means the maximum number of persons who may be granted CW-1 status in a given fiscal year or other period as determined by DHS, as follows:

(A) For fiscal year 2011, the numerical limitation is 22,417 per fiscal year.

(B) For fiscal year 2012, the numerical limitation is 22,416 per fiscal year.

(C) For each fiscal year beginning on October 1, 2012 until the end of the transition period, the numerical limitation will be a number less than 22,416 that is determined by DHS and published via Notice in the FEDERAL REGISTER. The numerical limitation for any fiscal year will be less than the number for the previous fiscal year, and will be a number reasonably calculated in DHS's discretion to reduce the number of CW-1 nonimmigrants to zero by the end of the transition period.

(D) DHS may adjust the numerical limitation for a fiscal year or other period in its discretion at any time via Notice in the FEDERAL REGISTER, as long as such adjustment is consistent with paragraph (w)(1)(viii)(C) of this section.

(E) If the numerical limitation is not reached for a specified fiscal year, unused numbers do not carry over to the next fiscal year.

(ix) *Occupational category* means those employment activities that DHS has determined require alien workers

to supplement the resident workforce and includes:

(A) Professional, technical, or management occupations;

(B) Clerical and sales occupations;

(C) Service occupations;

(D) Agricultural, fisheries, forestry, and related occupations;

(E) Processing occupations;

(F) Machine trade occupations;

(G) Benchwork occupations;

(H) Structural work occupations; and

(I) Miscellaneous occupations.

(x) *Petition* means USCIS Form I-129CW, Petition for a CNMI-Only Non-immigrant Transitional Worker, a successor form, other form, or electronic equivalent, any supplemental information requested by USCIS, and additional evidence as may be prescribed or requested by USCIS.

(xi) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2014, unless the CNMI-only transitional worker program is extended by the Secretary of Labor, in which case the transition period will end for purposes of the CW transitional worker program on the date designated by the Secretary of Labor.

(xii) *United States worker* means a national of the United States, an alien lawfully admitted for permanent residence, or a national of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau who is eligible for nonimmigrant admission and is employment-authorized under the Compacts of Free Association between the United States and those nations.

(2) *Eligible aliens*. Subject to the numerical limitation, an alien may be classified as a CW-1 nonimmigrant if, during the transition period, the alien:

(i) Will enter or remain in the CNMI for the purpose of employment in the transition period in an occupational category that DHS has designated as requiring alien workers to supplement the resident workforce;

(ii) Is petitioned for by an employer;

(iii) Is not present in the United States, other than the CNMI;

(iv) If present in the CNMI, is lawfully present in the CNMI;

(v) Is not inadmissible to the United States as a nonimmigrant or has been

granted a waiver of each applicable ground of inadmissibility; and

(vi) Is ineligible for status in a nonimmigrant worker classification under section 101(a)(15) of the Act.

(3) *Derivative beneficiaries—CW-2 nonimmigrant classification.* The spouse or minor child of a CW-1 nonimmigrant may accompany or follow the alien as a CW-2 nonimmigrant if the alien:

(i) Is not present in the United States, other than the CNMI;

(ii) If present in the CNMI, is lawfully present in the CNMI; and

(iii) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility.

(4) *Eligible employers.* To be eligible to petition for a CW-1 nonimmigrant worker, an employer must:

(i) Be engaged in legitimate business;

(ii) Consider all available United States workers for the position being filled by the CW-1 worker;

(iii) Offer terms and conditions of employment which are consistent with the nature of the petitioner's business and the nature of the occupation, activity, and industry in the CNMI; and

(iv) Comply with all Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational safety, and minimum wage requirements.

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW-1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education fee of \$150 per beneficiary per year. An employer filing a petition is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c). If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

(6) *Appropriate documents.* Documentary evidence establishing eligibility for CW status is required. A petition must be accompanied by:

(i) Evidence demonstrating the petitioner meets the definition of eligible employer in this section;

(ii) An attestation by the petitioner certified as true and accurate by an ap-

propriate official of the petitioner, of the following:

(A) No qualified United States worker is available to fill the position;

(B) The employer is doing business as defined in paragraph (w)(1)(ii) of this section;

(C) The employer is a legitimate business as defined in paragraph (w)(1)(vi) of this section;

(D) The employer is an eligible employer as described in paragraph (w)(4) of this section and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs the CW-1 nonimmigrant worker;

(E) The beneficiary meets the qualifications for the position;

(F) The beneficiary, if present in the CNMI, is lawfully present in the CNMI;

(G) The position is not temporary or seasonal employment, and the petitioner does not reasonably believe it to qualify for any other nonimmigrant worker classification; and

(H) The position falls within the list of occupational categories designated by DHS.

(iii) Evidence of licensure if an occupation requires a Commonwealth or local license for an individual to fully perform the duties of the occupation. Categories of valid licensure for CW-1 classification are:

(A) *Licensure.* An alien seeking CW-1 classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the CNMI and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and allowed for the occupation with a temporary license, USCIS may grant the petition at its discretion after considering the duties performed, the degree of supervision received, and any limitations placed on the alien by the employer and/or pursuant to the temporary license.

(C) *Duties without licensure.* If the CNMI allows an individual to fully practice the occupation that usually requires a license without a license under the supervision of licensed senior or supervisory personnel in that occupation, USCIS may grant CW-1 status at its discretion after considering the

duties performed, the degree of supervision received, and any limitations placed on the alien if the facts demonstrate that the alien under supervision could fully perform the duties of the occupation.

(7) *Change of employers.* A change of employment to a new employer inconsistent with paragraphs (w)(7)(i) and (ii) of this section will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. A CW-1 nonimmigrant may change employers if:

(i) The prospective new employer files a petition to classify the alien as a CW-1 worker in accordance with paragraph (w)(5) of this section, and

(ii) An extension of the alien's stay is requested if necessary for the validity period of the petition.

(iii) A CW-1 may work for a prospective new employer after the prospective new employer files a Form I-129CW petition on the employee's behalf if:

(A) The prospective employer has filed a nonfrivolous petition for new employment before the date of expiration of the CW-1's authorized period of stay; and

(B) Subsequent to his or her lawful admission, the CW-1 has not been employed without authorization in the United States.

(iv) Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(v) If a CW-1's employment has been terminated prior to the filing of a petition by a prospective new employer consistent with paragraphs (w)(7)(i) and (ii), the CW-1 will not be considered to be in violation of his or her CW-1 status during the 30-day period immediately following the date on which the CW-1's employment terminated if a nonfrivolous petition for new employment is filed consistent with this paragraph within that 30-day period and the CW-1 does not otherwise violate the terms and conditions of his or her status during that 30-day period.

(8) *Amended or new petition.* If there are any material changes in the terms and conditions of employment, the petitioner must file an amended or new petition to reflect the changes.

(9) *Multiple beneficiaries.* A petitioning employer may include more than one beneficiary in a CW-1 petition if the beneficiaries will be working in the same occupational category, for the same period of time, and in the same location.

(10) *Named beneficiaries.* The petition must include the name of the beneficiary and other required information, as indicated in the form instructions, at the time of filing. Unnamed beneficiaries will not be permitted.

(11) *Early termination.* The petitioning employer must pay the reasonable cost of return transportation of the alien to the alien's last place of foreign residence if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission.

(12) *Approval.* USCIS will consider all the evidence submitted and such other evidence required in the form instructions to adjudicate the petition. USCIS will notify the petitioner of the approval of the petition on Form I-797, Notice of Action, or in another form as USCIS may prescribe:

(i) The approval notice will include the classification and name of the beneficiary or beneficiaries and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part.

(ii) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

(13) *Petition validity.* An approved petition will be valid for a period of up to one year.

(14) *How to apply for CW-1 or CW-2 status.* (i) Upon approval of the petition, a beneficiary, his or her eligible spouse, and or his or her minor child(ren) outside the CNMI will be informed in the approval notice of where they may apply for a visa authorizing admission in CW-1 or CW-2 status.

(ii) If the beneficiary is present in the CNMI, the petition also serves as the application for a grant of status as a CW-1.

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW-2 dependent status on Form I-539 (or such alternative form as

USCIS may designate) in accordance with the form instructions. The CW-2 status may not be approved until approval of the CW-1 petition. A spouse or child applying for CW-2 status on Form I-539 is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c).

(15) *Biometrics and other information.* The beneficiary of a CW-1 petition or the spouse or child applying for a grant or, extension of CW-2 status, or a change of status to CW-2 status, must submit biometric information as requested by USCIS. For a Form I-129CW petition where the beneficiary is present in the CNMI, the employer must submit the biometric service fee described in 8 CFR 103.7(b)(1) with the petition for each beneficiary for which CW-1 status is being requested or request a fee waiver for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. For a Form I-539 application where the applicant is present in the CNMI, the applicant must submit a biometric service fee for each CW-2 nonimmigrant on the application with the application or obtain a waiver of the biometric service fee described in 8 CFR 103.7(b)(1) for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. A biometric service fee is not required for beneficiaries under the age of 14, or who are at least 79 years of age.

(16) *Period of admission.* (i) A CW-1 nonimmigrant will be admitted for the period of petition validity, plus up to 10 days before the validity period begins and 10 days after the validity period ends. The CW-1 nonimmigrant may not work except during the validity period of the petition. A CW-2 spouse will be admitted for the same period as the principal alien. A CW-2 minor child will be admitted for the same period as the principal alien, but such admission will not extend beyond the child's 18th birthday.

(ii) The temporary departure from the CNMI of the CW-1 nonimmigrant will not affect the derivative status of the CW-2 spouse and minor children, provided the familial relationship continues to exist and the principal re-

mains eligible for admission as a CW-1 nonimmigrant.

(17) *Extension of petition validity and extension of stay.* (i) The petitioner may request an extension of an employee's CW-1 nonimmigrant status by filing a new petition.

(ii) A request for a petition extension may be filed only if the validity of the original petition has not expired.

(iii) Extensions of CW-1 status may be granted for a period of up to 1 year until the end of the transition period, subject to the numerical limitation.

(iv) To qualify for an extension of stay, the petitioner must demonstrate that the beneficiary or beneficiaries:

(A) Continuously maintained the terms and conditions of CW-1 status;

(B) Remains admissible to the United States; and

(C) Remains eligible for CW-1 classification.

(v) The derivative CW-2 nonimmigrant may file an application for extension of nonimmigrant stay on Form I-539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW-2 status extension may not be approved until approval of the CW-1 extension petition.

(18) *Change or adjustment of status.* A CW-1 or CW-2 nonimmigrant can apply to change nonimmigrant status under section 248 of the Act or apply for adjustment of status under section 245 of the Act, if otherwise eligible. During the transition period, CW-1 or CW-2 nonimmigrants may be the beneficiary of a petition for or may apply for any nonimmigrant or immigrant visa classification for which they may qualify.

(19) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on CW-1 or CW-2 classification.* An alien may be granted, be admitted in and maintain lawful CW-1 or CW-2 nonimmigrant status while, at the same time, lawfully seeking to become a lawful permanent resident of the United States, provided he or she intends to depart the CNMI voluntarily at the end of the period of authorized stay. The filing of an application for or approval of a permanent labor certification or an immigrant visa preference

Department of Homeland Security

§ 214.2

petition, the filing of an application for adjustment of status, or the lack of residence abroad will not be the basis for denying:

- (i) A CW-1 petition filed on behalf of the alien;
- (ii) A request to extend a CW-1 status pursuant to a petition previously filed on behalf of the alien;
- (iii) An application for CW-2 classification filed by an alien;
- (iv) A request to extend CW-2 status pursuant to the extension of a related CW-1 alien's extension; or
- (v) An application for admission as a CW-1 or CW-2 nonimmigrant.

(20) *Rejection.* USCIS may reject an employer's petition for new or extended CW-1 status if the numerical limitation has been met. In that case, the petition and accompanying fee will be rejected and returned with the notice that numbers are unavailable for the CW nonimmigrant classification. The beneficiary's application for admission based upon an approved petition will not be rejected based upon the numerical limitation.

(21) *Denial.* The ultimate decision to grant or deny CW-1 or CW-2 classification or status is a discretionary determination, and the petition or the application may be denied for failure of the petitioner or the applicant to demonstrate eligibility or for other good cause. The denial of a petition to classify an alien as a CW-1 may be appealed to the USCIS Administrative Appeals Office or any successor body. The denial of a grant of CW-1 or CW-2 status within the CNMI, or of an application for change or extension of status filed under this section, may not be appealed.

(22) *Terms and conditions of CW Non-immigrant status.* (i) *Geographical limitations.* CW-1 and CW-2 statuses are only applicable in the CNMI. Entry, employment and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver. Except as provided in paragraph (w)(22)(iii) of this section, an alien with CW-1 or CW-2 status who enters or attempts to enter, or travels or attempts to travel to any other part of the United States without an appropriate visa or visa waiver, or who violates conditions of nonimmigrant stay appli-

cable to any such authorized status in any other part of the United States, will be deemed to have violated CW-1 or CW-2 status.

(ii) *Re-entry.* An alien with CW-1 or CW-2 status who travels abroad from the CNMI will require a CW-1 or CW-2 or other appropriate visa to be re-admitted to the CNMI.

(iii) *Direct Guam transit.*

(A) *Travel from the CNMI to the Philippines.* An alien with CW-1 or CW-2 status who is a national of the Philippines may travel to the Philippines via a direct Guam transit without being deemed to violate that status.

(B) *Travel from the Philippines to the CNMI.* An alien who is a national of the Philippines may travel to the CNMI via a direct Guam transit under the following conditions: If an immigration officer determines that the alien warrants a discretionary exercise of parole authority, the alien may be paroled into Guam via direct Guam transit to undergo preinspection outbound from Guam for admission to the CNMI pursuant to 8 CFR 235.5(a) or to proceed for inspection upon arrival in the CNMI. During any such preinspection, the alien will be admitted in CW-1 or CW-2 status if the immigration officer in Guam determines that the alien is admissible to the CNMI. A condition of the admission is that the alien must complete the direct Guam transit. DHS, in its discretion, may exempt such alien from the provisions of 8 CFR 235.5(a) relating to separation and boarding of passengers after inspection.

(iv) *Employment authorization.* An alien with CW-1 nonimmigrant status is only authorized employment in the CNMI for the petitioning employer. An alien with CW-2 status is not authorized to be employed.

(23) *Expiration of status.* CW-1 status expires when the alien violates his or her CW-1 status (or in the case of a CW-1 status violation caused solely by termination of the alien's employment, at the end of the 30 day period described in section 214.2(w)(7)(v)), 10 days after the end of the petition's validity period, or at the end of the transitional worker program, whichever is earlier. CW-2 nonimmigrant status expires when the status of the related CW-1 alien expires, on a CW-2 minor

§214.3

8 CFR Ch. I (1–1–16 Edition)

child's 18th birthday, when the alien violates his or her status, or at the end of the transitional worker program, whichever is earlier. No alien will be eligible for admission to the CNMI in CW-1 or CW-2 status, and no CW-1 or CW-2 visa will be valid for travel to the CNMI, after the transitional worker program ends.

(24) *Waivers of inadmissibility for applicants lawfully present in the CNMI.* An applicant for CW-1 or CW-2 nonimmigrant status, who is otherwise eligible for such status and otherwise admissible to the United States, and who possesses appropriate documents demonstrating that the applicant is lawfully present in the CNMI, may be granted a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the Act, including the grounds of inadmissibility described in sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(II) of the Act, as a matter of discretion for the purpose of granting the CW-1 or CW-2 nonimmigrant status. Such waiver may be granted without additional form or fee. Appropriate documents required for such a waiver include a valid unexpired passport and other documentary evidence demonstrating that the applicant is lawfully present in the CNMI, such as an "umbrella permit" or a DHS-issued Form I-94. Evidence that the applicant possesses appropriate documents may be provided by an employer to accompany a petition, by an eligible spouse or minor child to accompany the Form I-539 (or such alternative form as USCIS may designate), or in such other manner as USCIS may designate.

(Title VI of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2303); secs. 103 and 214, Immigration and Nationality Act (8 U.S.C. 1103 and 1184))

[38 FR 35425, Dec. 28, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §214.2, see the List of CFR Sections Affected, which appears in the Finding Aids section in the printed volume and at www.fdsys.gov.

§214.3 Approval of schools for enrollment of F and M nonimmigrants.

(a) *Filing petition—*

(1) *General.* A school or school system seeking initial or continued authoriza-

tion for attendance by nonimmigrant students under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act, or both, must file a petition for certification or recertification with SEVP, using the Student and Exchange Visitor Information System (SEVIS), in accordance with the procedures at paragraph (h) of this section. The petition must state whether the school or school system is seeking certification or recertification for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act or both. The petition must identify by name and address each location of the school that is included in the petition for certification or recertification, specifically including any physical location in which a nonimmigrant can attend classes through the school (*i.e.*, campus, extension campuses, satellite campuses, etc.).

(i) *School systems.* A school system, as used in this section, means public school (grades 9–12) or private school (grades kindergarten–12). A petition by a school system must include a list of the names and addresses of those schools included in the petition with the supporting documents.

(ii) *Submission requirements.* Certification and recertification petitions require that a complete Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Student, including supplements A and B and bearing original signatures, be included with the school's submission of supporting documentation. In submitting the Form I-17, a school certifies that the designated school officials (DSOs) signing the form have read and understand DHS regulations relating to: Nonimmigrant students at 8 CFR 214.1, 214.2(f), and/or 214.2(m); change of nonimmigrant classification for students at 8 CFR 248; school certification and recertification under this section; withdrawal of school certification under this section and 8 CFR 214.4; that both the school and its DSOs intend to comply with these regulations at all times; and that, to the best of its knowledge, the school is eligible for SEVP certification. Willful misstatements may constitute perjury (18 U.S.C. 1621).

Department of Homeland Security

§ 214.3

(2) *Approval for F-1 or M-1 classification, or both—(i) F-1 classification.* The following schools may be approved for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act:

(A) A college or university, *i.e.*, an institution of higher learning which awards recognized bachelor's, master's doctor's or professional degrees.

(B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees.

(C) A seminary.

(D) A conservatory.

(E) An academic high school.

(F) A private elementary school.

(G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.

(ii) *M-1 classification.* The following schools are considered to be vocational or nonacademic institutions and may be approved for attendance by nonimmigrant students under section 101(a)(15)(M)(i) of the Act:

(A) A community college or junior college which provides vocational or technical training and which awards recognized associate degrees.

(B) A vocational high school.

(C) A school which provides vocational or nonacademic training other than language training.

(iii) *Both F-1 and M-1 classification.* A school may be approved for attendance by nonimmigrant students under both sections 101(a)(15)(F)(i) and 101(a)(15)(M)(i) of the Act if it has both instruction in the liberal arts, fine arts, language, religion, or the professions and vocational or technical training. In that case, a student whose primary intent is to pursue studies in liberal arts, fine arts, language, religion, or the professions at the school is classified as a nonimmigrant under section 101(a)(15)(F)(i) of the Act. A student whose primary intent is to pursue vocational or technical training at the school is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(iv) *English language training for a vocational student.* A student whose pri-

mary intent is to pursue vocational or technical training who takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(v) The following may not be approved for attendance by foreign students:

(A) A home school,

(B) A public elementary school, or

(C) An adult education program, as defined by section 203(l) of the Adult Education and Family Literacy Act, Public Law 105-220, as amended, 20 U.S.C. 9202(l), if the adult education program is funded in whole or in part by a grant under the Adult Education and Family Literacy Act, or by any other Federal, State, county or municipal funding.

(3) *Eligibility.* (i) The petitioner, to be eligible for certification, must establish at the time of filing that it:

(A) Is a bona fide school;

(B) Is an established institution of learning or other recognized place of study;

(C) Possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(D) Is, in fact, engaged in instruction in those courses.

(ii) The petitioner, to be eligible for recertification, must establish at the time of filing that it:

(A) Remains eligible for certification in accordance with paragraph (a)(3)(i) of this section;

(B) Has complied during its previous period of certification or recertification with recordkeeping, retention, and reporting requirements and all other requirements of paragraphs (g), (j), (k), and (l) of this section.

(b) *Supporting documents.* Institutions petitioning for certification or recertification must submit certain supporting documents as follows, pursuant to sections 101(a)(15)(F) and (M) of the Act. A petitioning school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof shall submit a certification to that effect signed by the appropriate public official who

shall certify that he or she is authorized to do so. A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he or she is authorized to do so to the effect that it meets the requirements of the State or local public educational system. Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which offers courses recognized by a State-approving agency as appropriate for study for veterans under the provisions of 38 U.S.C. 3675 and 3676 may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he or she is authorized to do so. A charter shall not be considered a license, approval, or accreditation. A school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses). Neither a catalogue nor such a written statement need be included with a petition submitted by:

(1) A school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof;

(2) A school accredited by a nationally recognized accrediting body; or

(3) A secondary school operated by or as part of a school so accredited.

(c) *Other evidence.* If the petitioner is a vocational, business, or language school, or American institution of re-

search recognized as such by the Secretary of Homeland Security, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Attorney General, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. If the petitioner is an institution of higher education and is not within the category described in paragraph (b) (1) or (2) of this section, it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees that its credits have been and are accepted unconditionally by at least three such institutions of higher learning. If the petitioner is an elementary or secondary school and is not within the category described in paragraph (b) (1) or (3) of this section, it must submit evidence that attendance at the petitioning institution satisfies the compulsory attendance requirements of the State in which it is located and that the petitioning school qualifies graduates for acceptance by schools of a higher educational level within the category described in paragraph (b) (1), (2), or (3) of this section.

(d) *Interview of petitioner.* The petitioner or an authorized representative of the petitioner may be required to appear in person before or be interviewed by telephone by a DHS representative prior to the adjudication of a petition for certification or recertification. The interview will be conducted under oath.

(e) *Notices to schools related to certification or recertification petitions or to out-of-cycle review*—(1) *General.* All notices from SEVP to schools or school systems related to school certification, recertification, or out-of-cycle review (including, but not limited to, notices related to the collection of evidence, testimony, and appearance pertaining

to petitions for recertification encompassing compliance with the record-keeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as to eligibility) will be served in accordance with the procedures at 8 CFR 103.2(b)(1), (4)–(16), (18) and (19), with the exception that all procedures will be conducted by SEVP, the SEVP Director, and the Assistant Secretary, ICE, as appropriate, and except as provided in this section. All such notices will be served (*i.e.*, generated and transmitted) through SEVIS and/or by e-mail. The date of service is the date of transmission of the e-mail notice. DSOs must maintain current contact information, including current e-mail addresses, at all times. Failure of a school to receive SEVP notices due to inaccurate DSO e-mail addresses in SEVIS or blockages of the school's e-mail system caused by spam filters is not grounds for appeal of a denial or withdrawal. The term "in writing" means either a paper copy bearing original signatures or an electronic copy bearing electronic signatures.

(2) *SEVP approval notification and SEVIS updating by certified schools.* SEVP will notify the petitioner by updating SEVIS to reflect approval of the petition and by e-mail upon approval of a certification or recertification petition. The certification or recertification is valid only for the type of program and nonimmigrant classification specified in the certification or recertification approval notice. The certification must be recertified every two years and may be subject to out-of-cycle review at any time. Approval may be withdrawn in accordance with 8 CFR 214.4.

(3) *Modifications to Form I-17 while a school is SEVP-certified.* Any modification made by an SEVP-certified school on the Form I-17 at any time after certification and for the duration of a school's authorization to enroll F and/or M students must be reported to SEVP and will be processed by SEVP in accordance with the provisions of paragraphs (f)(1), (g)(2) and (h)(3)(i) of this section.

(4) *Notice of Intent to Withdraw (NOIW) SEVP certification—(i) Automatic withdrawal.* SEVP will serve the school

with an NOIW 30 days prior to a school's SEVP certification expiration date if the school has not submitted to SEVP a completed recertification petition, in accordance with paragraph (h)(2) of this section. The school will be automatically withdrawn immediately, in accordance with 8 CFR 214.4(a)(3), if it has not submitted a completed recertification petition by the school's certification expiration date.

(ii) *Withdrawal on notice.* SEVP will serve a Withdrawal on Notice, in accordance with 8 CFR 214.4(b), if SEVP determines that a school reviewed out-of-cycle has failed to sustain eligibility or has failed to comply with the recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section. When a school fails to file an answer to an NOIW within the 30-day period, SEVP will withdraw the school's certification and notify the DSOs of the decision, in accordance with 8 CFR 214.4(d). Such withdrawal of certification may not be appealed.

(5) *Notice of Denial.* A Notice of Denial will be served to a school when SEVP denies a petition for initial certification or recertification. The notice will address appeals options. Schools denied recertification must comply with 8 CFR 214.4(i).

(6) *Notice of Automatic Withdrawal.* Schools that relinquish SEVP certification for any of the reasons cited in 8 CFR 214.4(a)(3) will be served a Notice of Automatic Withdrawal.

(7) *Notice of Withdrawal.* A school found to be ineligible for continued SEVP certification as a result of an out-of-cycle review will receive a Notice of Withdrawal. Schools withdrawn must comply with 8 CFR 214.4(i).

(8) *Notice of SEVIS Access Termination Date.* The Notice of SEVIS Access Termination Date gives the official date for the school's denial or withdrawal to be final and SEVIS access to be terminated. In most situations, SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld, in accordance with 8 CFR 214.4(i)(3). The school will no longer be able to access SEVIS and SEVP will

automatically terminate any remaining Active SEVIS records for that school on that date.

(f) *Adjudication of a petition for SEVP certification or recertification*—(1) *Approval*. The school is required to immediately report through SEVIS any change to its school information upon approval of a petition for SEVP certification or recertification. Modification to school information listed in paragraph (h)(3) of this section will require a determination of continued eligibility must keep for certification. The certification or recertification is valid only for the type of program and student specified in the approval notice. The certification may be withdrawn in accordance with the provisions of 8 CFR 214.4, is subject to review at any time, and will be reviewed every two years.

(2) *Denial*. The petitioner will be notified of the reasons for the denial and appeal rights, in accordance with the provisions of 8 CFR part 103 and 8 CFR 214.4, if SEVP denies a petition for certification or recertification.

(g) *Recordkeeping and reporting requirements*—(1) *Student records*. An SEVP-certified school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20, while the student is attending the school and until the school notifies SEVP, in accordance with the requirements of paragraphs (g)(1) and (2) of this section, that the student is not pursuing a full course of study. Student information not required for entry in SEVIS may be kept in the school's student system of records, but must be accessible to DSOs. The school must keep a record of having complied with the reporting requirements for at least three years after the student is no longer pursuing a full course of study. The school must maintain records on the student in accordance with paragraphs (g)(1) and (2) of this section if a school recommends reinstatement for a student who is out of status. The school must maintain records on the student for three years from the date of the denial if the reinstatement is denied. The DSO must make the information and documents required by this paragraph available, including academic transcripts, and

must furnish them to DHS representatives upon request. Schools must maintain and be able to provide an academic transcript or other routinely maintained student records that reflect the total, unabridged academic history of the student at the institution, in accordance with paragraph (g)(1)(iv) of this section. All courses must be recorded in the academic period in which the course was taken and graded. The information and documents that the school must keep on each student are as follows:

(i) Identification of the school, to include name and full address.

(ii) Identification of the student, to include name while in attendance (record any legal name change), date and place of birth, country of citizenship, and school's student identification number.

(iii) Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents cannot receive mail at such physical residence, the school must provide a mailing address in SEVIS. If the mailing address and the physical address are not the same, the school must maintain a record of both mailing and physical addresses and provide the physical location of residence of the student and his or her dependents to DHS upon request.

(iv) Record of coursework. Identify the student's degree program and field of study. For each course, give the periods of enrollment, course identification code and course title; the number of credits or contact hours, and the grade; the number of credits or clock hours, and for credit hour courses the credit unit; the term unit (semester hour, quarter hour, etc.). Include the date of withdrawal if the student withdrew from a course. Show the grade point average for each session or term. Show the cumulative credits or clock hours and cumulative grade point average. Narrative evaluation will be accepted in lieu of grades when the school uses no other type of grading.

(v) Record of transfer credit or clock hours accepted. Type of hours, course identification, grades.

Department of Homeland Security

§ 214.3

(vi) Academic status. Include the effective date or period if suspended, dismissed, placed on probation, or withdrawn.

(vii) Whether the student has been certified for practical training, and the beginning and end dates of certification.

(viii) Statement of graduation (if applicable). Title of degree or credential received, date conferred, program of study or major.

(ix) Termination date and reason.

(x) The documents referred to in paragraph (k) of this section.

NOTE TO PARAGRAPH (g)(1): A DHS officer may request any or all of the data in paragraphs (g)(1)(i) through (x) of this section on any individual student or class of students upon notice. This notice will be in writing if requested by the school. The school will have three work days to respond to any request for information concerning an individual student, and ten work days to respond to any request for information concerning a class of students. The school will respond orally on the same day the request for information is made if DHS requests information on a student who is being held in custody, and DHS will provide a written notification that the request was made after the fact, if the school so desires. DHS will first attempt to gain information concerning a class of students from DHS record systems.

(2) *Reporting changes in student and school information.* (i) Schools must update SEVIS with the current information within 21 days of a change in any of the information contained in paragraphs (f)(1) and (h)(3) of this section.

(ii) Schools are also required to report within 21 days any change of the information contained in paragraph (g)(1) or the occurrence of the following events:

(A) Any student who has failed to maintain status or complete his or her program;

(B) A change of the student's or dependent's legal name or U.S. address;

(C) Any student who has graduated early or prior to the program end date listed on SEVIS Form I-20;

(D) Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and

(E) Any other notification request not covered by paragraph (g)(1) of this

section made by DHS with respect to the current status of the student.

(F) For F-1 students authorized by USCIS to engage in a 17-month extension of OPT,

(1) Any change that the student reports to the school concerning legal name, residential or mailing address, employer name, or employer address; and

(2) The end date of the student's employment reported by a former employer in accordance with § 214.2(f)(10)(ii)(C)(4).

(iii) Each term or session and no later than 30 days after the deadline for registering for classes, schools are required to report the following registration information:

(A) Whether the student has enrolled at the school, dropped below a full course of study without prior authorization by the DSO, or failed to enroll;

(B) The current address of each enrolled student; and

(C) *The start date of the student's next session, term, semester, trimester, or quarter.* For initial students, the start date is the "program start date" or "report date." (These terms are used interchangeably.) The DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes when determining the report date on the Form I-20. Such required activities may include, but are not limited to, research projects and orientation sessions. The DSO may not, however, indicate a report date more than 30 days prior to the start of classes. The next session start date is the start of classes for continuing students.

(D) *Adjustment to the program completion date.* Any factors that influence the student's progress toward program completion (e.g., deferred attendance, authorized drop below, program extension) must be reflected by making an adjustment updating the program completion date.

(3) *Administrative correction of a student's record.* In instances where technological or computer problems on the part of SEVIS cause an error in the student's record, the DSO may request

the SEVIS system administrator, without fee, to administratively correct the student's record.

(h) *SEVP certification, recertification, out-of-cycle review, and oversight of schools*—(1) *Certification*. A school seeking SEVP certification for attendance by nonimmigrants under section 101(a)(15)(F)(i) or 101(a)(15)(m)(i) of the Act must use SEVIS to file an electronic petition (which compiles the data for the Form I-17) and must submit the nonrefundable certification petition fee on-line.

(i) *Filing a petition*. The school must access the SEVP Web site at <http://www.ice.gov/sevis> to file a certification petition in SEVIS. The school will be issued a temporary ID and password in order to access SEVIS to complete and submit an electronic Form I-17. The school must submit the proper non-refundable certification petition fee as provided in 8 CFR 103.7(b)(1).

(ii) *Site visit, petition adjudication and school notification*. SEVP will conduct a site visit for each petitioning school and its additional schools or campuses. SEVP will contact the school to arrange the site visit. The school must comply with and complete the visit within 30 days after the date SEVP contacts the school to arrange the visit, or the petition for certification will be denied as abandoned. DSOs and school officials that have signed the school's Form I-17 petition must be able to demonstrate to DHS representatives how they obtain access to the regulations cited in the certification as part of the site visit. Paper or electronic access is acceptable. DSOs must be able to extract pertinent citations within the regulations related to their requirements and responsibilities. SEVP will serve a notice of approval and SEVIS will be updated to reflect the school's certification if SEVP approves the school's certification petition.

(iii) *Certification denial*. SEVP will serve a notice of denial in accordance with paragraph (f)(2) of this section if a school's petition for certification is denied.

(2) *Recertification*. Schools are required to file a completed petition for SEVP recertification before the school's certification expiration date,

which is two years from the date of their previous SEVP certification or recertification expiration date, except for the first recertification cycle after publication of the recertification rule. There is no recertification petition fee. SEVP will review a petitioning school's compliance with the recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as continued eligibility for certification, pursuant to paragraph (a)(3) of this section.

(i) *Filing of petition for recertification*. Schools must submit a completed Form I-17 (including supplements A and B) using SEVIS, and submit a paper copy of the Form I-17 bearing original signatures of all officials. SEVP will notify all DSOs of a previously certified school 180 days prior to the school's certification expiration date that the school may submit a petition for recertification. A school may file its recertification petition at any time after receipt of this notification. A school must submit a complete recertification petition package, as outlined in the submission guidelines, by its certification expiration date. SEVP will send a notice of confirmation of complete filing or rejection to the school upon receipt of any filing of a petition for recertification.

(A) Notice of confirmation assures a school of uninterrupted access to SEVIS while SEVP adjudicates the school's petition for recertification. A school that has complied with the petition submission requirements will continue to have SEVIS access after its certification expiration date while the adjudication for recertification is pending. The school is required to comply with all regulatory recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section during the period the petition is pending.

(B) Notice of rejection informs a school that it must take prompt corrective action in regard to its recertification petition prior to its certification expiration date to ensure that its SEVIS access will not be terminated and its petition for recertification will be accepted for adjudication.

Department of Homeland Security

§ 214.3

(ii) *Consequence of failure to petition.* SEVP will serve an NOIW to the school 30 days prior to a school's certification expiration date. SEVP will no longer accept a petition for recertification from the school and will immediately withdraw the school's certification if the school does not petition for recertification, abandons its petition, or does not submit a complete recertification petition package by the certification expiration date, in accordance with the automatic withdrawal criteria in 8 CFR 214.4(a)(3). The school must comply with 8 CFR 214.4(i) upon withdrawal.

(iii) *School recertification process—(A) General.* School recertification reaffirms the petitioning school's eligibility for SEVP certification and the school's compliance with record-keeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section since its previous certification.

(B) *Compliance.* Assessment by SEVP of a school petitioning for recertification will focus primarily on overall school compliance, but may also include examination of individual DSO compliance as data and circumstances warrant. Past performance of these individuals, whether or not they continue to serve as principal designated school officials (PDSOs) or DSOs, will be considered in any petition for recertification of the school.

(C) *On-site review for recertification.* All schools are subject to on-site review, at the discretion of SEVP, in conjunction with recertification. The school must comply with and complete an on-site review within 30 days of the notification by a DHS representative of a school that it has been selected for an on-site review for recertification, or the petition for recertification will be denied as abandoned, resulting in the school's withdrawal from SEVIS.

(iv) *Recertification approval.* SEVP will serve a notice of approval if a school's petition for recertification is approved. The date of the subsequent recertification review will be two years after the school's certification expiration date from this petition cycle.

(v) *Recertification denial.* SEVP will serve a notice of denial if a school's pe-

tition for recertification is denied, in accordance with 8 CFR 103.3(a)(1)(i).

(vi) *Adjustment of certification expiration date.* Schools eligible for recertification before March 25, 2009 will, at a minimum, have their certification expiration date extended to March 25, 2009. SEVP may extend the certification expiration date beyond this date during the first cycle of recertification.

(3) *Out-of-cycle review and oversight of SEVP-certified schools.* (i) SEVP will determine if out-of-cycle review is required upon receipt in SEVIS of any changes from an SEVP-certified school to its Form I-17 information. The Form I-17 information that requires out-of-cycle review when changed includes:

(A) Approval for attendance of students (F/M/both);

(B) Name of school system; name of main campus;

(C) Mailing address of the school;

(D) Location of the school;

(E) School type;

(F) Public/private school indicator;

(G) Private school owner name;

(H) The school is engaged in;

(I) The school operates under the following Federal, State, Local or other authorization;

(J) The school has been approved by the following national, regional, or state accrediting association or agency;

(K) Areas of study;

(L) Degrees available from the school;

(M) If the school is engaged in elementary or secondary education;

(N) If the school is engaged in higher education;

(O) If the school is engaged in vocational or technical education;

(P) If the school is engaged in English language training;

(Q) Adding or deleting campuses;

(R) Campus name;

(S) Campus mailing address; and

(T) Campus location address.

(ii) SEVP may request a school to electronically update all Form I-17 fields in SEVIS and provide SEVP with documentation supporting the update. The school must complete such updates in SEVIS and submit the supporting documentation to SEVP within 10 business days of the request from SEVP.

(iii) SEVP may review a school's certification at any time to verify the school's compliance with the record-keeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section to verify the school's continued eligibility for SEVP certification pursuant to paragraph (a)(3) of this section. SEVP may initiate remedial action with the school, as appropriate, and may initiate withdrawal proceedings against the school pursuant to 8 CFR 214.4(b) if non-compliance or ineligibility of a school is identified.

(iv) *On-site review.* SEVP-certified schools are subject to on-site review at any time. SEVP will initiate withdrawal proceedings against a certified school, pursuant to 8 CFR 214.4(b), if the certified school selected for on-site review prior to its certification expiration date fails to comply with and complete the review within 30 days of the date SEVP contacted the school to arrange the review.

(v) *Notice of Continued Eligibility.* SEVP will serve the school a notice of continued eligibility if, upon completion of an out-of-cycle review, SEVP determines that the school remains eligible for certification. Such notice will not change the school's previously-determined certification expiration date unless specifically notified by SEVP.

(vi) *Withdrawal of certification.* SEVP will institute withdrawal proceedings in accordance with 8 CFR 214.4(b) if, upon completion of an out-of-cycle review, SEVP determines that a school or its programs are no longer eligible for certification.

(vii) *Voluntary withdrawal.* A school can voluntarily withdraw from SEVP certification at any time or in lieu of complying with an out-of-cycle review or request. Failure of a school to comply with an out-of-cycle review or request by SEVP will be treated as a voluntary withdrawal. A school must initiate voluntary withdrawal by sending a request for withdrawal on official school letterhead to SEVP.

(i) *Administration of student regulations.* DHS officials may conduct out-of-cycle, on-site reviews on the campuses of SEVP-certified schools to determine whether nonimmigrant students on those campuses are complying

with DHS regulations pertaining to them, including the requirement that each maintains a valid passport. DHS officers will take appropriate action regarding violations of the regulations by nonimmigrant students.

(j) *Advertising.* In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

(k) *Issuance of Certificate of Eligibility.* A DSO of an SEVP-certified school must sign any completed Form I-20 issued for either a prospective or continuing student or a dependent. A Form I-20 issued by a certified school system must state which school within the system the student will attend. Only a DSO of an SEVP-certified school may issue a Form I-20 to a prospective student and his or her dependents, and only after the following conditions are met:

(1) The prospective student has made a written application to the school.

(2) The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents have been received, reviewed, and evaluated at the school's location in the United States.

(3) The appropriate school authority has determined that the prospective student's qualifications meet all standards for admission.

(4) The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.

(1) *Designated Official.* (1) Meaning of term *Designated Official.* As used in §§214.1(b), 214.2(b), 214.2(f), 214.2(m), and 214.4, a *Designated Official*, *Designated School Official (DSO)*, or *Principal Designated School Official (PDSO)*, means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal

Department of Homeland Security

§ 214.4

obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The PDSO and any other DSO must be named by the president, owner, or head of a school or school system. The PDSO and DSO may not delegate this designation to any other person.

(i) A PDSO and DSO must be either a citizen or lawful permanent resident of the United States.

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of any DSO on his or her associated campus. SEVP will use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations, as well as any system alerts generated by SEVIS. SEVP may also designate certain functions in SEVIS for use by the PDSO only. The PDSO of the main campus is the only DSO authorized to submit a Form I-17 for recertification. The PDSO and DSO will share the same responsibilities in all other respects.

(iii) School officials may nominate as many DSOs in addition to PDSOs as they determine necessary to adequately provide recommendations to F and/or M students enrolled at the school regarding maintenance of non-immigrant status and to support timely and complete recordkeeping and reporting to DHS, as required by this section. School officials must not permit a DSO or PDSO nominee access to SEVIS until DHS approves the nomination.

(2) *Name, title, and sample signature.* Petitions for SEVP certification, review and recertification must include the names, titles, and sample signatures of designated officials. An SEVP-certified school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name, title and e-mail address of any new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO within 21 days of the change. DHS may, at its discretion, reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

(3) *Statement of designated officials.* A petition for school approval must include a statement by each designated

official certifying that the official is familiar with the Service regulations relating to the requirements for admission and maintenance of status of non-immigrant students, change of non-immigrant status under part 248 of this chapter, and school approval under §§ 214.3 and 214.4, and affirming the official's intent to comply with these regulations. At the time a new designated official is added, the designated official must make the same certification.

[30 FR 919, Jan. 29, 1965]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 214.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 214.4 Denial of certification, denial of recertification or withdrawal of SEVP certification.

(a) *General*—(1) *Denial of certification.* The petitioning school will be notified of the reasons and appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3(a)(1)(iii). No fee is required with appeals related to SEVP certification. A petitioning school denied certification may file a new petition for certification at any time.

(2) *Denial of recertification or withdrawal on notice.* The school must wait at least one calendar year from the date of denial of recertification or withdrawal on notice before being eligible to petition again for SEVP certification if a school's petition for recertification is denied by SEVP pursuant to 8 CFR 214.3(h)(3)(v), or its certification is withdrawn on notice pursuant to paragraph (b) of this section. Eligibility to re-petition will be at the discretion of the Director of SEVP. SEVP certification of a school or school system for the attendance of nonimmigrant students, pursuant to sections 101(a)(15)(F)(i) and/or 101(a)(15)(M)(i) of the Immigration and Nationality Act, will be withdrawn on notice subsequent to out-of-cycle review, or recertification denied, if the school or school system is determined to no longer be entitled to certification for any valid and substantive reason including, but not limited to, the following:

§ 214.4

8 CFR Ch. I (1–1–16 Edition)

(i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena.

(ii) Failure to comply with 8 CFR 214.3(g)(2).

(iii) Failure of a DSO to notify SEVP of the attendance of an F–1 transfer student as required by 8 CFR 214.2(f)(8)(ii).

(iv) Failure of a DSO to identify on the Form I–20 which school within the system the student must attend, in compliance with 8 CFR 214.3(k).

(v) Willful issuance by a DSO of a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training.

(vi) Conduct on the part of a DSO that does not comply with the regulations.

(vii) The designation as a DSO of an individual who does not meet the requirements of 8 CFR 214.3(l)(1).

(viii) Failure to provide SEVP paper copies of the school's Form I–17 bearing the names, titles, and signatures of DSOs as required by 8 CFR 214.3(l)(2).

(ix) Failure to submit statements of DSOs as required by 8 CFR 214.3(l)(3).

(x) Issuance of Forms I–20 to students without receipt of proof that the students have met scholastic, language, or financial requirements as required by 8 CFR 214.3(k)(2).

(xi) Issuance of Forms I–20 to aliens who will not be enrolled in or carry full courses of study, as defined in 8 CFR 214.2(f)(6) or 214.2(m)(9).

(xii) Failure to operate as a bona fide institution of learning.

(xiii) Failure to employ adequate qualified professional personnel.

(xiv) Failure to limit advertising in the manner prescribed in 8 CFR 214.3(j).

(xv) Failure to maintain proper facilities for instruction.

(xvi) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the school's Form I–17.

(xvii) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the Form I–17.

(xviii) Failure to comply with the procedures for issuance of Forms I–20 as set forth in 8 CFR 214.3(k).

(xix) Failure of a DSO to notify SEVP of material changes, such as changes to the school's name, address, or curricular changes that represent material change to the scope of institution offerings (e.g., addition of a program, class or course for which the school is issuing Forms I–20, but which does not have Form I–17 approval), as required by 8 CFR 214.3(f)(1).

(3) *Automatic withdrawal.* A school that is automatically withdrawn and subsequently wishes to enroll non-immigrant students in the future may file a new petition for SEVP certification at any time. The school must use the certification petition procedures described in 8 CFR 214.3(h)(1) to gain access to SEVIS for submitting its petition. Past compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l), and with the requirements for transition of students under paragraph (i) of this section will be considered in the evaluation of a school's subsequent petition for certification. SEVP certification will be automatically withdrawn:

(i) As of the date of termination of operations, if an SEVP-certified school terminates its operations.

(ii) As of a school's certification expiration date, if an SEVP-certified school does not submit a completed recertification petition in the manner required by 8 CFR 214.3(h)(2).

(iii) Sixty days after the change of ownership if an SEVP-certified school changes ownership, unless the school files a new petition for SEVP certification, in accordance with the procedures at 8 CFR 214.3(h)(1), within 60 days of the change of ownership. SEVP will review the petition if the school properly files such petition to determine whether the school still meets the eligibility requirements of 8 CFR 214.3(a)(3) and is still in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l). SEVP will institute withdrawal proceedings in accordance with paragraph (b) of this section if, upon completion of the review, SEVP finds that the school is no longer eligible for certification, or is not in compliance with the recordkeeping, retention, reporting and other

requirements of 8 CFR 214.3(f), (g), (j), (k), and (l).

(iv) If an SEVP-certified school voluntarily withdraws from its certification.

(4) *Automatic withdrawal as of SEVIS mandatory compliance date.* The present approval of any school that has not filed for enrollment in SEVIS by the mandatory compliance date for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act is automatically withdrawn as of the day following the mandatory compliance date for SEVIS. Given the time necessary to conduct a review of each school, the Service will review and adjudicate Form I-17 petitions for approval in SEVIS prior to the SEVIS mandatory compliance date only for Form I-17 petitions filed at least 75 days prior to this mandatory date. If a Form I-17 petition is filed less than 75 days prior to the mandatory compliance date and is not adjudicated prior to the mandatory compliance date, the school will not be authorized to access SEVIS and will be unable to issue any SEVIS Forms I-20 until the adjudication is complete.

(b) *Withdrawal on notice.* SEVP will initiate an out-of-cycle review and serve the school with an NOIW if SEVP has information that a school or school system may no longer be entitled to SEVP certification prior to the school being due for its two-year recertification. The NOIW will inform the school of:

(1) The grounds for withdrawing SEVP certification.

(2) The 30-day deadline from the date of the service of the NOIW for the school to submit sworn statements, and documentary or other evidence, to rebut the grounds for withdrawal of certification in the NOIW. An NOIW is not a means for the school to submit evidence that it should have previously submitted as a part of its established reporting requirements.

(3) The school's right to submit a written request (including e-mail) within 30 days of the date of service of the NOIW for a telephonic interview in support of its response to the NOIW.

(c) *Assistance of counsel.* The school or school system shall also be informed in the notice of intent to withdraw ap-

proval that it may be assisted or represented by counsel of its choice qualified under part 292 of this chapter, at no expense to the Government, in preparation of its answer or in connection with the interview.

(d) *Allegations admitted or no answer filed.* If the school or school system admits all of the allegations in the notice of intent to withdraw approval, or if the school or school system fails to file an answer within the 30-day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30-day period.

(e) *Allegations denied.* If the school or school system denies the allegations in the notice of intent to withdraw approval, then the school or school system shall, in its answer, provide all information or evidence on which the answer is based.

(f) *Interview requested.* (1) If in its answer to the notice of intent to withdraw approval the school or school system requests an interview, the school or school system shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school or school system at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of SEVP will be in accordance with 8 CFR 103.3(a)(1).

(h) *Appeals.* Notices of denial or withdrawal of SEVP certification will include appeal alternatives and filing instructions. Any appeal must be taken within 15 days after the service of the decision by stating the reasons for the appeal in the notice of appeal provided with the instructions, and supported by a statement or brief specifically setting forth the grounds for contesting the withdrawal of the approval. No fee is required with appeals related to denial of SEVP recertification or withdrawal of SEVP certification.

(i) *Operations at a school when SEVP certification is relinquished or withdrawn, or whose recertification is denied and on the SEVIS access termination date—(1)*

§214.5

General. A school whose certification is relinquished or withdrawn, or whose recertification is denied may, at SEVP discretion, no longer be able to create Initial student records or issue new Forms I-20, Certificate of Eligibility for Nonimmigrant Student, for initial attendance. Schools must comply with the instructions given in the notice of withdrawal or denial with regard to management of status for their Initial and continuing F and/or M students. All other SEVIS functionality, including event reporting for students, will remain unchanged until the school's SEVIS access termination date. The school must continue to comply with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l) until its SEVIS access termination date.

(2) *SEVIS access termination.* In determining the SEVIS access termination date, SEVP will consider the impact that such date will have upon SEVP, the school, and the school's non-immigrant students in determining the SEVIS access termination date. In most situations, SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld unless a school whose certification is withdrawn or whose recertification is denied is suspected of criminal activity or poses a potential national security threat. The school will no longer be able to access SEVIS, and SEVP will automatically terminate any remaining Active SEVIS records for that school on the SEVIS access termination date.

(3) *Legal obligations and ramifications for a school and its DSOs when a school is having SEVP certification denied or withdrawn.* Schools are obligated to their students to provide the programs of study to which they have committed themselves in the students' application for enrollment and acceptance process. Schools are obligated to the U.S. government to comply with the recordkeeping, retention, reporting and other requirements contained in 8 CFR 214.3. With any new petition for SEVP certification, SEVP will consider the extent to which a school has fulfilled these obligations to students and the

8 CFR Ch. I (1-1-16 Edition)

U.S. government during any previous period of SEVP certification.

[37 FR 17463, Aug. 29, 1972, as amended at 48 FR 14592, Apr. 5, 1983; 48 FR 19867, May 3, 1983; 48 FR 22131, May 17, 1983; 49 FR 41015, Oct. 19, 1984; 50 FR 9991, Mar. 13, 1985; 54 FR 19544, May 8, 1989; 55 FR 41988, Oct. 17, 1990; 67 FR 60112, Sept. 25, 2002; 73 FR 55702, Sept. 26, 2008]

§214.5 Libyan and third country nationals acting on behalf of Libyan entities.

(a) Notwithstanding any other provision of this title, the nonimmigrant status of any Libyan national, or of any other foreign national acting on behalf of a Libyan entity, who is engaging in aviation maintenance, flight operations, or nuclear-related studies or training is terminated.

(b) Notwithstanding any other provision of this chapter, the following benefits will not be available to any Libyan national or any other foreign national acting on behalf of a Libyan entity where the purpose is to engage in, or seek to obtain aviation maintenance, flight operations or nuclear-related studies or training:

- (1) Application for school transfer.
- (2) Application for extension of stay.
- (3) Employment authorization or practical training.
- (4) Request for reinstatement of student status.
- (5) Application for change of non-immigrant status.

(Secs. 103, 212, 214, 248; 8 U.S.C. 1103, 1182, 1184, 1258)

[48 FR 10297, Mar. 3, 1983]

§214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level.

(a) *General.* Under section 214(e) of the Act, a citizen of Canada or Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the North American Free Trade Agreement (NAFTA).

(b) *Definitions.* As used in this section, the terms:

Business activities at a professional level means those undertakings which require that, for successful completion,

Department of Homeland Security

§214.6

the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

Business person, as defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

Engage in business activities at a professional level means the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.

Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence. The alien must satisfy the inspecting immigration officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. In order to establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting immigration officer that his or her work assignment in the United States will end at a predictable time and that he or she will depart upon completion of the assignment.

(c) *Appendix 1603.D.1 to Annex 1603 of the NAFTA*. Pursuant to the NAFTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions set forth in Appendix 1603.D.1 to Annex 1603. The professions in Appendix 1603.D.1 and the minimum requirements for qualification for each are as follows:¹

APPENDIX 1603.D.1 (ANNOTATED)

—Accountant—Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.

¹A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

—Architect—Baccalaureate or Licenciatura Degree; or state/provincial license.²

—Computer Systems Analyst—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma³ or Post Secondary Certificate⁴ and three years' experience.

—Disaster relief insurance claims adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)—Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.

—Economist—Baccalaureate or Licenciatura Degree.

—Engineer—Baccalaureate or Licenciatura Degree; or state/provincial license.

—Forester—Baccalaureate or Licenciatura Degree; or state/provincial license.

—Graphic Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate and three years experience.

—Hotel Manager—Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post Secondary Certificate in hotel/restaurant management and three years experience in hotel/restaurant management.

—Industrial Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post Secondary Certificate, and three years experience.

—Interior Designer—Baccalaureate or Licenciatura Degree or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

²The terms "state/provincial license" and "state/provincial/federal license" mean any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

³"Post Secondary Diploma" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States.

⁴"Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

§214.6

8 CFR Ch. I (1–16 Edition)

- Land Surveyor—Baccalaureate or Licenciatura Degree or state/provincial/federal license.
- Landscape Architect—Baccalaureate or Licenciatura Degree.
- Lawyer (including Notary in the province of Quebec)—L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years); or membership in a state/provincial bar.
- Librarian—M.L.S., or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite).
- Management Consultant—Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement.
- Mathematician (including Statistician)—Baccalaureate or Licenciatura Degree.⁵
- Range Manager/Range Conservationist—Baccalaureate or Licenciatura Degree.
- Research Assistant (working in a post-secondary educational institution)—Baccalaureate or Licenciatura Degree.
- Scientific Technician/Technologist⁶—Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.
- Social Worker—Baccalaureate or Licenciatura Degree.
- Sylviculturist (including Forestry Specialist)—Baccalaureate or Licenciatura Degree.
- Technical Publications Writer—Baccalaureate or Licenciatura Degree, or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Urban Planner (including Geographer)—Baccalaureate or Licenciatura Degree.
- Vocational Counselor—Baccalaureate or Licenciatura Degree.

⁵The term “Mathematician” includes the profession of Actuary. An Actuary must satisfy the necessary requirements to be recognized as an actuary by a professional actuarial association or society. A professional actuarial association or society means a professional actuarial association or society operating in the territory of at least one of the Parties.

⁶A business person in this category must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

Medical/Allied Professionals

- Dentist—D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.
- Dietitian—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)⁷—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Nutritionist—Baccalaureate or Licenciatura Degree.
- Occupational Therapist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Pharmacist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Physician (teaching or research only)—M.D. Doctor en Medicina; or state/provincial license.
- Physiotherapist/Physical Therapist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Psychologist—state/provincial license; or Licenciatura Degree.
- Recreational Therapist—Baccalaureate or Licenciatura Degree.
- Registered nurse—state/provincial license or Licenciatura Degree.
- Veterinarian—D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license.
- SCIENTIST
- Agriculturist (including Agronomist)—Baccalaureate or Licenciatura Degree.
- Animal Breeder—Baccalaureate or Licenciatura Degree.
- Animal Scientist—Baccalaureate or Licenciatura Degree.
- Apiculturist—Baccalaureate or Licenciatura Degree.
- Astronomer—Baccalaureate or Licenciatura Degree.
- Biochemist—Baccalaureate or Licenciatura Degree.
- Biologist—Baccalaureate or Licenciatura Degree.⁸
- Chemist—Baccalaureate or Licenciatura Degree.
- Dairy Scientist—Baccalaureate or Licenciatura Degree.
- Entomologist—Baccalaureate or Licenciatura Degree.

⁷A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

⁸The term “Biologist” includes the profession of Plant Pathologist.

Department of Homeland Security

§214.6

—Epidemiologist—Baccalaureate or
Licenciatura Degree.
—Geneticist—Baccalaureate or Licenciatura
Degree.
—Geochemist—Baccalaureate or
Licenciatura Degree.
—Geologist—Baccalaureate or Licenciatura
Degree.
—Geophysicist (including Oceanographer in
Mexico and the United States)—Bacca-
laureate or Licenciatura Degree.
—Horticulturist—Baccalaureate or
Licenciatura Degree.
—Meteorologist—Baccalaureate or
Licenciatura Degree.
—Pharmacologist—Baccalaureate or
Licenciatura Degree.
—Physicist (including Oceanographer in
Canada)—Baccalaureate or Licenciatura
Degree.
—Plant Breeder—Baccalaureate or
Licenciatura Degree.
—Poultry Scientist—Baccalaureate or
Licenciatura Degree.
—Soil Scientist—Baccalaureate or
Licenciatura Degree.
—Zoologist—Baccalaureate or Licenciatura
Degree.
—TEACHER
—College—Baccalaureate or Licenciatura
Degree.
—Seminary—Baccalaureate or Licenciatura
Degree.
—University—Baccalaureate or Licenciatura
Degree.

(d) *Classification of citizens of Canada or Mexico as TN professionals under the NAFTA*—(1) *Citizens of Mexico*. A citizen of Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with NAFTA upon presentation of a valid passport and valid TN nonimmigrant visa at a United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station.

(2) *Citizens of Canada*. A citizen of Canada seeking temporary entry as a business person to engage in business activities at a professional level shall make application for admission with a Department officer at the United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station.

(3) *Documentation*. Upon application for a visa at a United States consular office, or, in the case of a citizen of

Canada making application for admission at a port-of-entry, an applicant under this section shall present the following:

(i) *Proof of citizenship*. A Mexican citizen applying for admission as a TN nonimmigrant must establish such citizenship by presenting a valid passport. Canadian citizens, while not required to present a valid passport for admission unless traveling from outside the Western hemisphere, must establish Canadian citizenship.

(ii) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications*. The applicant must present documentation sufficient to satisfy the consular officer (in the case of a Mexican citizen) or the Department officer (in the case of a Canadian citizen) that the applicant is seeking entry to the United States to engage in business activities for a United States employer(s) or entity(ies) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer, and must be supported by diplomas, degrees or membership in a professional organization. Degrees received by the applicant from an educational institution not located within Canada, Mexico, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The documentation shall fully affirm:

(A) The Appendix 1603.D.1 profession of the applicant;

(B) A description of the professional activities, including a brief summary of daily job duties, if appropriate, in which the applicant will engage in for the United States employer/entity;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian or Mexican citizen has professional level status; and

(E) The arrangements for remuneration for services to be rendered.

(e) *Procedures for admission*. A citizen of Canada or Mexico who qualifies for

admission under this section shall be provided confirming documentation and shall be admitted under the classification symbol TN for a period not to exceed three years. The conforming document provided shall bear the legend “multiple entry.” The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian Citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the TN applicant for admission shall be provided a DHS-issued receipt on the appropriate form.

(f) [Reserved]

(g) *Readmission.* (1) *With a Form I-94.* An alien may be readmitted to the United States in TN classification for the remainder of the authorized period of TN admission on Form I-94 (see §1.4), without presentation of the letter or supporting documentation described in paragraph (d)(3) of this section, and without the prescribed fee set forth in 8 CFR 103.7(b)(1), provided that the original intended professional activities and employer(s) have not changed, and the Form I-94 has not expired.

(2) *Without a valid I-94.* If the alien seeking readmission to the United States in TN classification is no longer in possession of a valid, unexpired Form I-94, and the period of initial admission in TN classification has not lapsed, then a new Form I-94 may be issued for the period of validity that remains on the TN nonimmigrant’s original Form I-94 with the legend “multiple entry” and the alien can then be readmitted in TN status if the alien presents alternate evidence as follows:

(i) For Canadian citizens, alternate evidence may include, but is not limited to, a fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s).

(ii) For Mexican citizens seeking readmission as TN nonimmigrants, alternate evidence shall consist of presentation of a valid unexpired TN visa and evidence of a previous admission.

(h) *Extension of stay.* (1) *Filing.* A United States employer of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant

status, or a United States entity (in the case of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status and is employed by a foreign employer), may request an extension of stay, subject to the following conditions:

(i) An extension of stay must be requested by filing the appropriate form with the fee provided at 8 CFR 103.7(b)(1), in accordance with the form instructions with USCIS.

(ii) The beneficiary must be physically present in the United States at the time of the filing of the appropriate form requesting an extension of stay as a TN nonimmigrant. If the alien is required to leave the United States for any reason while the petition is pending, the petitioner may request that USCIS notify the consular office where the beneficiary is required to apply for a visa or, if visa exempt, a DHS-designated port-of-entry where the beneficiary will apply for admission to the United States, of the approval.

(iii) An extension of stay in TN status may be approved by USCIS for a maximum period of three years.

(iv) There is no specific limit on the total period of time an alien may be in TN status provided the alien continues to be engaged in TN business activities for a U.S. employer or entity at a professional level, and otherwise continues to properly maintain TN nonimmigrant status.

(2) *Readmission at the border.* Nothing in paragraph (h)(1) of this section shall preclude a citizen of Canada or Mexico who has previously been admitted to the United States in TN status, and who has not violated such status while in the United States, from applying at a DHS-designated port-of-entry, prior to the expiration date of the previous period of admission, for a new three-year period of admission. The application for a new period of admission must be supported by a new letter from the United States employer or the foreign employer, in the case of a citizen of Canada who is providing prearranged services to a United States entity, which meets the requirements of paragraph (d) of this section, together with the appropriate filing fee as noted in 8 CFR 103.7(b)(1). Citizens of Mexico must present a valid passport and a

valid, unexpired TN nonimmigrant visa when applying for readmission, as outlined in paragraph (d)(1) of this section.

(i) *Request for change or addition of United States employers*—(1) *Filing at the service center.* A citizen of Canada or Mexico admitted into the United States as a TN nonimmigrant who seeks to change or add a United States employer during the period of admission must have the new employer file a Form I-129 with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms of remuneration for services. Employment with a different or with an additional employer is not authorized prior to Department approval of the request.

(2) *Readmission at the border.* Nothing in paragraph (i)(1) of those section precludes a citizen of Canada or Mexico from applying for readmission to the United States for the purpose of presenting documentation from a different or additional United States or foreign employer. Such documentation shall meet the requirements prescribed in paragraph (d) of this section. The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Citizens of Mexico may present documentation from a different or additional United States or foreign employer to a consular officer as evidence in support of a new nonimmigrant TN visa application.

(3) No action shall be required on the part of a citizen of Canada or Mexico in TN status who is transferred to another location by the same United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer. In a case of a transfer to a separately incorporated subsidiary or affiliate, the requirements of paragraphs (i)(1) and (i)(2) of this section will apply.

(j) *Spouse and unmarried minor children accompanying or following to join.* (1) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status, if otherwise admissible, may be admitted initially, readmitted, or granted a

change of nonimmigrant status or an extension of his or her period of stay for the same period of time granted to the TN nonimmigrant. Such spouse or unmarried minor children shall, upon approval of an application for admission, readmission, change of status or extension of stay be classified as TD nonimmigrants. A request for a change of status to TD or an extension of stay of a TD nonimmigrant may be made on the appropriate form together with appropriate filing fees and evidence of the principal alien's current TN status.

(2) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired TD nonimmigrant visa unless otherwise exempt under 8 CFR 212.1.

(3) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be issued confirming documentation bearing the legend "multiple entry." There shall be no fee required for admission of the spouse and unmarried minor children.

(4) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall not accept employment in the United States unless otherwise authorized under the Act.

(k) *Effect of a strike.* (1) If the Secretary of Labor certifies or otherwise informs the Director of USCIS that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such dispute, the United States may refuse to issue an immigration document authorizing the entry or employment of such an alien.

(2) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, or whether USCIS has been otherwise informed that such a strike or labor dispute is in progress, the alien

§214.7

8 CFR Ch. I (1–1–16 Edition)

shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(i) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated in the same manner as all other TN nonimmigrants;

(ii) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(iii) Although participation by a TN nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for removal, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to removal.

(3) If there is a strike or other labor dispute involving a work stoppage of workers in progress but such strike or other labor dispute is not certified under paragraph (k)(1) of this section, or USCIS has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, Director of USCIS shall not deny a petition or deny entry to an applicant for TN status based upon such strike or other labor dispute.

[58 FR 69212, Dec. 30, 1993, as amended at 63 FR 1335, Jan. 9, 1998; 69 FR 11289, Mar. 10, 2004; 69 FR 60941, Oct. 13, 2004; 73 FR 61334, Oct. 16, 2008; 78 FR 18472, Mar. 27, 2013]

§214.7 Habitual residence in the territories and possessions of the United States and consequences thereof.

(a) *Definitions.* As used in this section, the term:

(1) *Compacts* means the agreements of free association between the United States and the governments of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, approved by Public Law 99–239 with respect to the governments of the Republic of the Marshall Islands and the Federated States of Micronesia, and by

Public Law 99–658, with respect to Palau.

(2) *Freely associated states (FAS)* means the following parts of the former Trust Territories of the Pacific Islands, namely, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(3) *Territories and possessions of the United States* means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa, as long as the Act does not apply to it.

(4)(i) *Habitual resident* means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa, as long as the Act is not applicable to it) pursuant to section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The term “habitual resident” does not apply to:

(A) A person who has established a continuing residence in a territory or possession of the United States, but whose cumulative physical presence in the United States amounts to less than 365 days; or

(B) A dependent of a resident representative described in section 152 of the Compacts; or

(C) A person who entered the United States for the purpose of full-time studies as long as such person maintains that status.

(ii) Since the term “habitual” resident requires that the person have entered the United States pursuant to section 141(a) of the Compacts, the term does not apply to FAS citizens whose presence in the territories or possessions is based on an authority other than section 141(a), such as:

(A) Members of the Armed Forces of the United States described in 8 CFR §235.1(c);

(B) Persons lawfully admitted for permanent residence in the United States; or

(C) Persons having nonimmigrant status whose entry into the United

Department of Homeland Security

§214.7

States is based on provisions of the Compacts or the Act other than section 141(a) of the Compacts.

(5) *Dependent* means a citizen of the FAS, as defined in section 141(a) of the Compacts, who:

- (i) Is a habitual resident;
- (ii) Resides with a principal habitual resident;
- (iii) Relies for financial support on that principal habitual resident; and
- (iv) Is either the parent, spouse, or unmarried child under the age of 21 of the principal habitual resident or the parent or child of the spouse of the principal habitual resident.

(6) *Principal habitual resident* means a habitual resident with whom one or more dependents reside and on whom dependent(s) rely for financial support.

(7) *Self-supporting* means:

- (i) Having a lawful occupation of a current and continuing nature that provides 40 hours of gainful employment each week. A part-time student attending an accredited college or institution of higher learning in a territory or possession of the United States receives for each college or graduate credit-hour of study a three-hour credit toward the 40-hour requirement; or
- (ii) If the person cannot meet the 40-hour employment requirement, having lawfully derived funds that meet or exceed 100 percent of the official poverty guidelines for Hawaii for a family unit of the appropriate size as published annually by the Department of Health and Human Services.

(8) *Receipt of unauthorized public benefits* means the acceptance of public benefits by fraud or willful misrepresentation in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 638, 639.

(b) *Where do these rules regarding habitual residence apply?* The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, the American Virgin Islands, and the Commonwealth of the Northern Mariana Islands. These rules

do not apply to habitual residents living in American Samoa as long as the Act does not extend to it. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

(c) *When is an arriving FAS citizen presumed to be a habitual resident?* (1) An arriving FAS citizen will be subject to the rebuttable presumption that he or she is a habitual resident if the Service has reason to believe that the arriving FAS citizen was previously admitted to the territory or possession more than one year ago; and

(2) That the arriving FAS citizen either;

(i) Failed to turn in his or her Form I-94 (see §1.4) when he or she previously departed from the United States; or

(ii) Failed to apply for a replacement Form I-94.

(d) *What rights do habitual residents have?* Habitual residents have the right to enter, reside, study, and work in the United States, its territories or possessions, in nonimmigrant status without regard to the requirements of sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Act.

(e) *What are the limitations on the rights of habitual residents?* (1) A habitual resident who is not a dependent is subject to removal if he or she:

(i) Is not and has not been self-supporting for a period exceeding 60 consecutive days for reasons other than a lawful strike or other labor dispute involving work stoppage; or

(ii) Has received unauthorized public benefits by fraud or willful misrepresentation; or

(iii) Is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

(2) Any dependent is removable from a territory or possession of the United States if:

(i) The principal habitual resident who financially supports him or her and with whom he or she resides, becomes subject to removal unless the dependent establishes that he or she has become a dependent of another habitual resident or becomes self-supporting; or

(ii) The dependent, as an individual, receives unauthorized public benefits

§§ 214.8–214.10

8 CFR Ch. I (1–1–16 Edition)

by fraud or willful misrepresentation; or

(iii) The dependent, as an individual, is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

[65 FR 56465, Sept. 19, 2000, as amended at 74 FR 55738, Oct. 28, 2009; 78 FR 18472, Mar. 27, 2013]

§§ 214.8–214.10 [Reserved]

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) *Definitions.* The Service shall apply the following definitions as provided in sections 103 and 107(e) of the Trafficking Victims Protection Act (TVPA) with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of chapter 77 of title 18, United States Code:

Bona fide application means an application for T-1 nonimmigrant status as to which, after initial review, the Service has determined that there appears to be no instance of fraud in the application, the application is complete, properly filed, contains an LEA endorsement or credible secondary evidence, includes completed fingerprint and background checks, and presents *prima facie* evidence to show eligibility for T nonimmigrant status, including admissibility.

Child means a person described as such in section 101(b)(1) of the Act.

Coercion means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services

are not respectively limited and defined.

Immediate family member means the spouse or a child of a victim of a severe form of trafficking in persons, and, in the case of a victim of a severe form of trafficking in persons who is under 21 years of age, a parent of the victim.

Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” (*United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

Law Enforcement Agency (LEA) means any Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. LEAs include the following components of the Department of Justice: the United States Attorneys’ Offices, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (Service), and the United States Marshals Service. The Diplomatic Security Service, Department of State, also is an LEA.

Law Enforcement Agency (LEA) endorsement means Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* of Form I-914, *Application for T Nonimmigrant Status*.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Reasonable request for assistance means a reasonable request made by a law enforcement officer or prosecutor

to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The “reasonableness” of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

TVPA means the Trafficking Victims Protection Act of 2000, Division A of the VTVPA, Pub. L. 106-386.

United States means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTVPA and in this section.

VTVPA means the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386.

(b) *Eligibility.* Under section 101(a)(15)(T)(i) of the Act, and subject to section 214(n) of the Act, the Service may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien demonstrates that he or she:

- (1) Is or has been a victim of a severe form of trafficking in persons;
- (2) Is physically present in the United States, American Samoa, or at a port-of-entry thereto, on account of such trafficking in persons;
- (3) Either:

- (i) Has complied with any reasonable request for assistance in the investigation or prosecution of acts of such trafficking in persons, or

- (ii) Is less than 15 years of age; and

- (4) Would suffer extreme hardship involving unusual and severe harm upon removal, as described in paragraph (i) of this section.

(c) *Aliens ineligible for T nonimmigrant status.* No alien, otherwise admissible, shall be eligible to receive a T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

(d) *Application procedures for T status—(1) Filing an application.* An applicant seeking T nonimmigrant status shall submit, by mail, a complete application package containing Form I-914, *Application for T Nonimmigrant Status*, along with all necessary supporting documentation, to the Service.

(2) *Contents of the application package.* In addition to Form I-914, an application package must include the following:

- (i) The proper fee for Form I-914 as provided in § 103.7(b)(1) of this chapter, or an application for a fee waiver as provided in § 103.7(c) of this chapter;

- (ii) Three current photographs;

- (iii) The fingerprint fee as provided in § 103.7(b)(1) of this chapter;

- (iv) Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons as set forth in paragraph (f) of this section;

- (v) Evidence that the alien is physically present in the United States on account of a severe form of trafficking in persons as set forth in paragraph (g) of this section;

- (vi) Evidence that the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, as set forth in paragraph (h) of this section, or has not attained 15 years of age; and

- (vii) Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if he or she were removed from the United States, as set forth in paragraph (i) of this section.

(3) *Evidentiary standards.* The applicant may submit any credible evidence relevant to the essential elements of the T nonimmigrant status. Original documents or copies may be submitted as set forth in §103.2(b)(4) and (b)(5) of this chapter. Any document containing text in a foreign language shall be submitted in accordance with §103.2(b)(3) of this chapter.

(4) *Filing deadline in cases in which victimization occurred prior to October 28, 2000.* Victims of a severe form of trafficking in persons whose victimization occurred prior to October 28, 2000 must file a completed application within one (1) year of January 31, 2002 in order to be eligible to receive T-1 nonimmigrant status. If the victimization occurred prior to October 28, 2000, an alien who was a child at the time he or she was a victim of a severe form of trafficking in persons must file a T status application within one (1) year of his or her 21st birthday, or one (1) year of January 31, 2002, whichever is later. For purposes of determining the filing deadline, an act of severe form of trafficking in persons will be deemed to have occurred on the last day in which an act constituting an element of a severe form of trafficking in persons, as defined in paragraph (a) of this section, occurred. If the applicant misses the deadline, he or she must show that exceptional circumstances prevented him or her from filing in a timely manner. Exceptional circumstances may include severe trauma, either psychological or physical, that prevented the victim from applying within the allotted time.

(5) *Fingerprint procedure.* All applicants for T nonimmigrant status must be fingerprinted for the purpose of conducting a criminal background check in accordance with the process and procedures described in §103.2(e) of this chapter. After submitting an application with fee to the Service, the applicant will be notified of the proper time and location to appear for fingerprinting.

(6) *Personal interview.* After the filing of an application for T nonimmigrant status, the Service may require an applicant to participate in a personal interview. The necessity of an interview is to be determined solely by the

Service. All interviews will be conducted in person at a Service-designated location. Every effort will be made to schedule the interview in a location convenient to the applicant.

(7) *Failure to appear for an interview or failure to follow fingerprinting requirements.* (i) Failure to appear for a scheduled interview without prior authorization or to comply with fingerprint processing requirements may result in the denial of the application.

(ii) Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Service unless the Service determines that the applicant received reasonable notice of the appointment. The applicant must notify the Service of any change of address in accordance with §265.1 of this chapter prior to the date on which the notice of the interview or fingerprint appointment was mailed to the applicant.

(iii) Failure to appear at the interview or fingerprint appointment may be excused, at the discretion of the Service, if the applicant promptly contacts the Service and demonstrates that such failure to appear was the result of exceptional circumstances.

(8) *Aliens in pending immigration proceedings.* Individuals who believe they are victims of severe forms of trafficking in persons and who are in pending immigration proceedings must inform the Service if they intend to apply for T nonimmigrant status under this section. With the concurrence of Service counsel, a victim of a severe form of trafficking in persons in proceedings before an immigration judge or the Board of Immigration Appeals (Board) may request that the proceedings be administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service. If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may grant such a request to administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service

finds an alien ineligible for T-1 nonimmigrant status, the Service may recommence proceedings that have been administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(9) *T applicants with final orders of exclusion, deportation or removal.* An alien who is the subject of a final order is not precluded from filing an application for T-1 nonimmigrant status directly with the Service. The filing of an application for T nonimmigrant status has no effect on the Service's execution of a final order, although the alien may file a request for stay of removal pursuant to §241.6(a) of this chapter. However, if the Service subsequently determines, under the procedures of this section, that the application is *bona fide*, the Service will automatically stay execution of the final order of deportation, exclusion, or removal, and the stay will remain in effect until a final decision is made on the T-1 application. The time during which such a stay is in effect shall not be counted in determining the reasonableness of the duration of the alien's continued detention under the standards of §241.4 of this chapter. If the T-1 application is denied, the stay of the final order is deemed lifted as of the date of such denial, without regard to whether the alien appeals the decision. If the Service grants an application for T nonimmigrant status, the final order shall be deemed canceled by operation of law as of the date of the approval.

(e) *Dissemination of information.* In appropriate cases, and in accordance with Department of Justice policies, the Service shall make information from applications for T-1 nonimmigrant status available to other Law Enforcement Agencies (LEAs) with the authority to detect, investigate, or prosecute severe forms of trafficking in persons. The Service shall coordinate with the appropriate Department of Justice

component responsible for prosecution in all cases where there is a current or impending prosecution of any defendants who may be charged with severe forms of trafficking in persons crimes in connection with the victimization of the applicant to ensure that the Department of Justice component responsible for prosecution has access to all witness statements provided by the applicant in connection with the application for T-1 nonimmigrant status, and any other documents needed to facilitate investigation or prosecution of such severe forms of trafficking in persons offenses.

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* The applicant must submit evidence that fully establishes eligibility for each element of the T nonimmigrant status to the satisfaction of the Attorney General. First, an alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 CFR 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18). An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.

(1) *Law Enforcement Agency endorsement.* An LEA endorsement is not required. However, if provided, it must be submitted by an appropriate law enforcement official on Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide

persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based (including the dates the severe forms of trafficking in persons and victimization occurred), and be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act. The traffickers must have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act. The situations involving labor or services must rise to the level of involuntary servitude, peonage, debt bondage, or slavery. The decision of whether or not to complete an LEA endorsement for an applicant shall be at the discretion of the LEA.

(2) *Primary evidence of victim status.* The Service will consider an LEA endorsement as primary evidence that the applicant has been the victim of a severe form of trafficking in persons provided that the details contained in the endorsement meet the definition of a severe form of trafficking in persons under this section. In the alternative, documentation from the Service granting the applicant continued presence in accordance with 28 CFR 1100.35 will be considered as primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the Service has revoked the continued presence based on a determination that the applicant is not a victim of a severe form of trafficking in persons.

(3) *Secondary evidence of victim status; Affidavits.* Credible secondary evidence and affidavits may be submitted to explain the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant be a victim of a severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and

cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. Applicants are encouraged to provide and document all credible evidence, because there is no guarantee that a particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons. If the applicant does not submit an LEA endorsement, the Service will proceed with the adjudication based on the secondary evidence and affidavits submitted. A non-exhaustive list of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. In addition, applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(4) *Obtaining an LEA endorsement.* A victim of a severe form of trafficking in persons who does not have an LEA endorsement should contact the LEA to which the alien has provided assistance to request an endorsement. If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1-888-428-7581 to file a complaint and be referred to an LEA.

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

(1) *In general.* The evidence and statements included with the application must state the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States, American Samoa, or a port-of-entry thereto, and demonstrate that the applicant is present now on account of the applicant's victimization as described in paragraph (f) of this section and section 101(a)(15)(T)(i)(I) of the Act.

(2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled. The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I-914, about when he or she escaped from the trafficker, what activities he or she has undertaken since that time, includ-

ing the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.

(3) *Departure from the United States.* An alien who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

(h) *Compliance with reasonable requests from a law enforcement agency for assistance in the investigation or prosecution.* Except as provided in paragraph (h)(3) of this section, the applicant must submit evidence that fully establishes that he or she has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. As provided in paragraph (h)(3) of this section, if the victim of a severe form of trafficking in persons is under age 15, he or she is not required to comply with any reasonable request for assistance in order to be eligible for T non-immigrant status, but may cooperate at his or her discretion.

(1) *Primary evidence of compliance with law enforcement requests.* An LEA endorsement describing the assistance provided by the applicant is not required evidence. However, if an LEA endorsement is provided as set forth in paragraph (f)(1) of this section, it will be considered primary evidence that the applicant has complied with any reasonable request in the investigation or prosecution of the severe form of trafficking in persons of which the applicant was a victim. If the Service has reason to believe that the applicant has not complied with any reasonable request for assistance by the endorsing LEA or other LEAs, the Service will contact the LEA and both the Service and the LEA will take all practical steps to reach a resolution acceptable to both agencies. The Service may, at its discretion, interview the alien regarding the evidence for and against the compliance, and allow the alien to

submit additional evidence of such compliance. If the Service determines that the alien has not complied with any reasonable request for assistance, then the application will be denied, and any approved application based on the LEA endorsement will be revoked pursuant to this section.

(2) *Secondary evidence of compliance with law enforcement requests; Affidavits.* Credible secondary evidence and affidavits may be submitted to show the non-existence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant comply with any reasonable request for assistance in the investigation or prosecution of that severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant that indicates the reason the LEA endorsement does not exist or is unavailable, and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence must show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime at the time, why the crime was not previously reported. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. In addition, applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Applicants are encouraged to describe and document all applicable factors, since there is no guarantee that a particular reason will result in a finding that the applicant has complied with reasonable requests. An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status.

(3) *Exception for applicants under the age of 15.* Applicants under the age of 15 are not required to demonstrate compliance with the requirement of any reasonable request for assistance in the investigation and prosecution of acts of severe forms of trafficking in persons. Applicants under the age of 15 must provide evidence of their age. Primary evidence that a victim of a severe form of trafficking in persons has not yet reached the age of 15 would be an official copy of the alien's birth certificate, a passport, or a certified medical opinion. Secondary evidence regarding the age of the applicant also may be submitted in accordance with §103.2(b)(2)(i) of this chapter. An applicant under the age of 15 still must provide evidence demonstrating that he or she satisfies the other necessary requirements, including that he or she is the victim of a severe form of trafficking in persons and faces extreme hardship involving unusual and severe harm if removed from the United States.

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal.* To be eligible for T-1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* Extreme hardship involving unusual and severe harm is a higher standard than that of extreme hardship as described in §240.58 of this chapter. A finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities. Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should take into account both traditional extreme hardship factors and those factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to, the following:

(i) The age and personal circumstances of the applicant;

(ii) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;

(iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;

(iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;

(v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;

(vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;

(vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and

(viii) The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

(2) *Evidence.* An applicant is encouraged to describe and document all factors that may be relevant to his or her case, since there is no guarantee that a particular reason or reasons will result in a finding that removal would cause extreme hardship involving unusual and severe harm to the applicant. Hardship to persons other than the alien victim of a severe form of trafficking in persons cannot be considered in determining whether an applicant would suffer extreme hardship involving unusual and severe harm.

(3) *Evaluation.* The Service will evaluate on a case-by-case basis, after a re-

view of the evidence, whether the applicant has demonstrated extreme hardship involving unusual or severe harm. The Service will consider all credible evidence submitted regarding the nature and scope of the hardship should the applicant be removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization as described in section 101(a)(15)(T)(i)(I) of the Act and any other circumstances. In appropriate cases, the Service may consider evidence from relevant country condition reports and any other public or private sources of information. The determination that extreme hardship involving unusual or severe harm to the alien exists is to be made solely by the Service.

(j) *Waiver of grounds of inadmissibility.* An application for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with §212.16 of this chapter, and submitted to the Service with the completed application package.

(k) *Bona fide application for T-1 non-immigrant status—(1) Criteria.* Once an application is submitted to the Service, the Service will conduct an initial review to determine if the application is a *bona fide* application for T non-immigrant status. An application shall be determined to be *bona fide* if, after initial review, it is properly filed, there appears to be no instance of fraud in the application, the application is complete (including the LEA endorsement or other secondary evidence), the application presents *prima facie* evidence of each element to show eligibility for T-1 nonimmigrant status, and the Service has completed the necessary fingerprinting and criminal background checks. If an alien is inadmissible under section 212(a) of the Act, the application will not be deemed to be *bona fide* unless the only grounds of inadmissibility are those under the circumstances described in section 212(d)(13) of the Act, or unless the Service has granted a waiver of inadmissibility on any other grounds. All waivers are discretionary and require a request for a waiver. Under section 212(d)(13), an application can be *bona fide* before the waiver is granted. This

is not the case under other grounds of inadmissibility.

(2) *Determination by USCIS.* An application for T-1 status under this section will not be treated as a bona fide application until USCIS has provided the notice described in paragraph (k)(3) of this section. In the event that an application is incomplete or if the application is complete but does not present sufficient evidence to establish prima facie eligibility for each required element of T nonimmigrant status, USCIS will follow the procedures provided in 8 CFR 103.2(b) for requesting additional evidence, issuing a notice of intent to deny, or adjudicating the case on the merits.

(3) *Notice to alien.* Once an application is determined to be a bona fide application for a T-1 nonimmigrant status, the Service will provide written confirmation to the applicant.

(4) *Stay of final order of exclusion, deportation, or removal.* A determination by the Service that an application for T-1 nonimmigrant status is bona fide automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the execution of a final order unless the Service has determined that the application is bona fide. Neither an immigration judge nor the Board of Immigration Appeals (Board) has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

(1) *Review and decision on applications—(1) De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. Evidence previously submitted for this and other immigration benefits or relief may be used by the Service in evaluating the eligibility of an applicant for T nonimmigrant status. However, the Service will not be bound by its previous factual determinations as to any essential elements of the T classification. The Service will determine, in its

sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

(3) *Decision.* After completing its review of the application, the Service shall issue a written decision granting or denying the application. If the Service determines that the applicant has met the requirements for T-1 nonimmigrant status, the Service shall grant the application, subject to the annual limitation as provided in paragraph (m) of this section. Along with the approval, the Service will include a list of nongovernmental organizations to which the applicant can refer regarding the alien's options while in the United States and resources available to the alien.

(4) *Work authorization.* When the Service grants an application for T-1 nonimmigrant status, the Service will provide the alien with an Employment Authorization Document incident to that status, which shall extend concurrently with the duration of the alien's T-1 nonimmigrant status.

(m) *Annual cap.* In accordance with section 214(n)(2) of the Act, the total number of principal aliens issued T-1 nonimmigrant status may not exceed 5,000 in any fiscal year.

(1) *Issuance of T-1 nonimmigrant status.* Once the cap is reached in any fiscal year, the Service will continue to review and consider applications in the order they are received. The Service will determine if the applicants are eligible for T-1 nonimmigrant status, but will not issue T-1 nonimmigrant status at that time. The revocation of an alien's T-1 status will have no effect on the annual cap.

(2) *Waiting list.* All eligible applicants who, due solely to the cap, are not granted T-1 nonimmigrant status shall be placed on a waiting list and will receive notice of such placement. While on the waiting list, the applicant shall maintain his or her current means to

Department of Homeland Security

§214.11

prevent removal (deferred action, parole, or stay of removal) and any employment authorization, subject to any limits imposed on that authorization. Priority on the waiting list is determined by the date the application was properly filed, with the oldest applications receiving the highest priority. As new classifications become available in subsequent years, the Service will issue them to applicants on the waiting list, in the order in which the applications were properly filed, providing the applicant remains admissible. The Service may require new fingerprint and criminal history checks before issuing an approval. After T-1 nonimmigrant status has been issued to qualifying applicants on the waiting list, any remaining T-1 nonimmigrant numbers will be issued to new qualifying applicants in the order that the applications were properly filed.

(n) [Reserved]

(o) *Admission of the T-1 applicant's immediate family members*—(1) *Eligibility.* Subject to section 214(n) of the Act, an alien who has applied for or been granted T-1 nonimmigrant status may apply for admission of an immediate family member, who is otherwise admissible to the United States, in a T-2 (spouse) or T-3 (child) derivative status (and, in the case of a T-1 principal applicant who is a child, a T-4 (parent) derivative status), if accompanying or following to join the principal alien. The applicant must submit evidence sufficient to demonstrate that:

(i) The alien for whom T-2, T-3, or T-4 status is being sought is an immediate family member of a T-1 nonimmigrant, as defined in paragraph (a) of this section, and is otherwise eligible for that status; and

(ii) The immediate family member or the T-1 principal would suffer extreme hardship, as described in paragraph (o)(5) of this section, if the immediate family member was not allowed to accompany or follow to join the principal T-1 nonimmigrant.

(2) *Filing procedures.* A T-1 principal may apply for T-2, T-3, or T-4 nonimmigrant status for an immediate family member by submitting Form I-914 and all necessary documentation by mail, including Supplement A, to the Service. The application for derivative

T nonimmigrant status for eligible family members can be filed on the same application as the T-1 application, or in a separate application filed at a subsequent time.

(3) *Contents of the application package for an immediate family member.* In addition to Form I-914, an application for T-2, T-3, or T-4 nonimmigrant status must include the following:

(i) The proper fee for Form I-914 as provided in §103.7(b)(1) of this chapter, or an application for a fee waiver as provided in §103.7(c) of this chapter;

(ii) Three current photographs;

(iii) The fingerprint fee as provided in §103.2(e) of this chapter for each immediate family member;

(iv) Evidence demonstrating the relationship of an immediate family member, as provided in paragraph (o)(4) of this section; and

(v) Evidence demonstrating extreme hardship as provided in paragraph (o)(5) of this section.

(4) *Relationship.* The relationship must exist at the time the application for the T-1 nonimmigrant status was filed, and must continue to exist at the time of the application for T-2, T-3, or T-4 status and at the time of the immediate family member's subsequent admission to the United States. If the T-1 principal alien proves that he or she became the parent of a child after the T-1 nonimmigrant status was filed, the child shall be eligible to accompany or follow to join the T-1 principal.

(5) *Evidence demonstrating extreme hardship for immediate family members.* The application must demonstrate that each alien for whom T-2, T-3, or T-4 status is being sought, or the principal T-1 applicant, would suffer extreme hardship if the immediate family member was not admitted to the United States or was removed from the United States (if already present). When the immediate family members are following to join the principal, the extreme hardship must be substantially different than the hardship generally experienced by other residents of their country of origin who are not victims of a severe form of trafficking in persons. The Service will consider all credible evidence of extreme hardship to the T-1 recipient or the individual

immediate family members. The determination of the extreme hardship claim will be evaluated on a case-by-case basis, in accordance with the factors outlined in §240.58 of this chapter. Applicants are encouraged to raise and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding of extreme hardship if the applicant is not allowed to enter or remain in the United States. In addition to these factors, other factors that may be considered in evaluating extreme hardship include, but are not limited to, the following:

- (i) The need to provide financial support to the principal alien;
- (ii) The need for family support for a principal alien; or
- (iii) The risk of serious harm, particularly bodily harm, to an immediate family member from the perpetrators of the severe forms of trafficking in persons.

(6) *Fingerprinting; interviews.* The provisions for fingerprinting and interviews in paragraphs (c)(5) through (c)(7) of this section also are applicable to applications for immediate family members.

(7) *Admissibility.* If an alien is inadmissible, an application for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with §212.16 of this chapter, and submitted to the Service with the completed application package.

(8) *Review and decision.* After reviewing the application under the standards of paragraph (1) of this section, the Service shall issue a written decision granting or denying the application for T-2, T-3, or T-4 status.

(9) *Derivative grants.* Individuals who are granted T-2, T-3, or T-4 nonimmigrant status are not subject to an annual cap. Applications for T-2, T-3, or T-4 nonimmigrant status will not be granted until a T-1 status has been issued to the related principal alien.

(10) *Employment authorization.* An alien granted T-2, T-3, or T-4 nonimmigrant status may apply for employment authorization by filing Form I-765, *Application for Employment Authorization*, with the appropriate fee or an application for fee waiver, in ac-

cordance with the instructions on, or attached to, that form. For derivatives in the United States, the Form I-765 may be filed concurrently with the filing of the application for T-2, T-3, or T-4 status or at any time thereafter. If the application for employment authorization is approved, the T-2, T-3, or T-4 alien will be granted employment authorization pursuant to §274a.12(c)(25) of this chapter. Employment authorization will last for the length of the duration of the T-1 nonimmigrant status.

(11) *Aliens outside the United States.* When the Service approves an application for a qualifying immediate family member who is outside the United States, the Service will notify the T-1 principal alien of such approval on Form I-797, *Notice of Action*. Form I-914, Supplement A, *Supplemental Application for Immediate Family Members of T-1 Recipient*, must be forwarded to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the T-1 recipient's qualifying immediate family member is located. The supplemental form may be used by a consular officer in determining the alien's eligibility for a T-2, T-3, or T-4 visa, as appropriate.

(p) *Duration of T nonimmigrant status.*

(1) *In general.* An approved T nonimmigrant status shall expire after 4 years from the date of approval. The status may be extended if a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity. At the time an alien is approved for T nonimmigrant status or receives an extension, USCIS shall notify the alien when his or her nonimmigrant status will expire. The applicant shall immediately notify USCIS of any changes in the applicant's circumstances that may affect eligibility under section 101(a)(15)(T)(i) of the Act and this section.

(2) *Information pertaining to adjustment of status.* USCIS will notify an alien granted T nonimmigrant status of the requirement to timely apply for

Department of Homeland Security

§214.11

adjustment of status, and that the failure to apply for adjustment of status in accordance with 8 CFR 245.23 will result in termination of the alien's T nonimmigrant status at the end of the 4-year period unless that status is extended in accordance with paragraph (p)(1) of this section. Aliens who properly apply for adjustment of status to that of a person admitted to permanent residence in accordance with 8 CFR 245.23 shall remain eligible for adjustment of status.

(q) *De novo review.* The Service shall conduct a *de novo* review of all evidence submitted at all stages in the adjudication of an application for T nonimmigrant status. Evidence previously submitted for this and other immigration benefits or relief may be used by the Service in evaluating the eligibility of an applicant for T nonimmigrant status. However, the Service will not be bound by its previous factual determinations as to any essential elements of the T classification. The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(r) *Denial of application.* Upon denial of any T application, the Service shall notify the applicant, any LEA providing an LEA endorsement, and the Department of Health and Human Service's Office of Refugee Resettlement in writing of the decision and the reasons for the denial in accordance with §103.3 of this chapter. Upon denial of an application for T nonimmigrant status, any benefits derived as a result of having filed a *bona fide* application will automatically be revoked when the denial becomes final. If an applicant chooses to appeal the denial pursuant to the provisions of §103.3 of this chapter, the denial will not become final until the appeal is adjudicated.

(s) *Revocation of approved T nonimmigrant status.* The alien shall immediately notify the Service of any changes in the terms and conditions of an alien's circumstances that may affect eligibility under section 101(a)(15)(T) of the Act and this section.

(1) *Grounds for notice of intent to revoke.* The Service shall send to the T nonimmigrant a notice of intent to re-

voke the status in relevant part if it is determined that:

(i) The T nonimmigrant violated the requirements of section 101(a)(15)(T) of the Act or this section;

(ii) The approval of the application violated this section or involved error in preparation procedure or adjudication that affects the outcome;

(iii) In the case of a T-2 spouse, the alien's divorce from the T-1 principal alien has become final;

(iv) In the case of a T-1 principal alien, an LEA with jurisdiction to detect or investigate the acts of severe forms of trafficking in persons by which the alien was victimized notifies the Service that the alien has unreasonably refused to cooperate with the investigation or prosecution of the trafficking in persons and provides the Service with a detailed explanation of its assertions in writing; or

(v) The LEA providing the LEA endorsement withdraws its endorsement or disavows the statements made therein and notifies the Service with a detailed explanation of its assertions in writing.

(2) *Notice of intent to revoke and reconsideration of evidence.* A district director may revoke the approval of a T nonimmigrant status at any time, even after the validity of the status has expired. The notice of intent to revoke shall be in writing and shall contain a detailed statement of the grounds for the revocation and the time period allowed for the T nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke approval of the T nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence shall be within the sole discretion of the director.

(3) *Revocation of T nonimmigrant status.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the alien with a written notification of the decision that explains the specific reasons for the revocation. The director also shall notify the LEA that supplied an endorsement to the alien, any consular

§214.12

8 CFR Ch. I (1–1–16 Edition)

officer having jurisdiction over the applicant, and HHS's Office of Refugee Resettlement.

(4) *Appeal of a revocation of approval.* The alien may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. All appeals of a revocation of approval will be processed and adjudicated in accordance with §103.3 of this chapter.

(5) *Effect of revocation of T–1 status.* In the event that a principal alien's T–1 nonimmigrant status is revoked, all T nonimmigrant status holders deriving status from the revoked status automatically shall have that status revoked. In the case where a T–2, T–3, or T–4 application is still awaiting adjudication, it shall be denied. The revocation of an alien's T–1 status will have no effect on the annual cap as described in paragraph (m) of this section.

(t) *Removal proceedings without revocation.* Nothing in this section shall prohibit the Service from instituting removal proceedings under section 240 of the Act for conduct committed after admission, or for conduct or a condition that was not disclosed to the Service prior to the granting of nonimmigrant status under section 101(a)(15)(T) of the Act, including the misrepresentation of material facts in the applicant's application for T nonimmigrant status.

(u) [Reserved]

(v) *Service officer referral.* Any Service officer who receives a request from an alien seeking protection as a victim of a severe form of trafficking in persons or seeking information regarding T nonimmigrant status shall follow the procedures for protecting and providing services to victims of severe forms of trafficking outlined in 28 CFR 1100.31. Aliens believed to be victims of a severe form of trafficking in persons shall be referred to the local Service office with responsibility for investigations relating to victims of severe forms of trafficking in persons for a consultation within 7 days. The local Service office may, in turn, refer the victim to another LEA with responsibility for investigating or prosecuting severe forms of trafficking in persons. If the alien has a credible claim to vic-

timization, he or she will be given the opportunity to submit an application for T status pursuant to section 101(a)(15)(T) of the Act and any other benefit or protection for which he or she may be eligible. An alien determined not to have a credible claim to being a victim of a severe form of trafficking in persons and who is subject to removal will be removed in accordance with Service policy.

[67 FR 4795, Jan. 31, 2002, as amended at 72 FR 19107, Apr. 17, 2007; 73 FR 75558, Dec. 12, 2008; 74 FR 55738, Oct. 28, 2009]

§214.12 Preliminary enrollment of schools in the Student and Exchange Visitor Information System (SEVIS).

(a) Private elementary and private secondary schools, public high schools, post-secondary schools, language schools, and vocational schools are eligible for preliminary enrollment in Student and Exchange Visitor Information System (SEVIS), beginning on or after July 1, 2002, but only if the school is accredited by an accrediting agency recognized by the United States Department of Education, CAPE, or AACCS, or in the case of a public high school, the school provides certification from the appropriate public official that the school meets the requirements of the state or local public educational system and has been continuously approved by the Service for a minimum of three years, as of July 1, 2002, for the admission of F or M nonimmigrant students. A school may establish that it is accredited by showing that it has been designated as an eligible school under Title IV of the Higher Education Act of 1965.

(b) Preliminary enrollment in SEVIS is optional for eligible schools. The preliminary enrollment period will be open from July 1, 2002, through August 16, 2002, or, if later, until the Service begins the SEVIS full scale certification process. The process for eligible schools to apply for preliminary enrollment through the Internet is as follows:

(1) Eligible institutions must access the Internet site, <http://www.ins.usdoj.gov/sevis>. Upon accessing the site, the president, owner, head of the school or designated school official

Department of Homeland Security

§ 214.13

will be asked to enter the following information: the school's name; the first, middle, and last name of the contact person for the school; and the e-mail address and phone number of the contact person.

(2) Once this information has been submitted, the Service will issue the school a temporary ID and password, which will be forwarded to the e-mail address listed. When the contact person receives this temporary ID and password, the school will again access the Internet site and will electronically enter the school's information for its Form I-17.

(c) The Service will review the information by a school submitted as provided in paragraph (b) of this section, and will preliminarily enroll a school in SEVIS, if it is determined to be eligible under the standards of paragraph (a) of this section. If the officer determines that the school is eligible for preliminary enrollment, the officer will update SEVIS and enroll the school and permanent user IDs and passwords will be automatically generated via e-mail to the DSOs listed on the Form I-17. Schools that are not approved by the Service for preliminary enrollment will be notified that they must apply for certification in accordance with the Interim Certification Rule. A school that is granted preliminary enrollment will have to use SEVIS for the issuance of any new Form I-20 to a new or continuing student.

(d) Schools granted preliminary enrollment in SEVIS will not have to apply for certification at this time. However, all such schools will be required to apply for certification, and pay the certification fee, prior to May 14, 2004.

(e) Eligible schools that meet the standards of paragraph (a) of this section, but do not apply for preliminary enrollment in SEVIS prior to the close of the preliminary enrollment period will have to apply for certification review under the Interim Certification Rule and pay the certification fee before enrolling in SEVIS. However, once a school meeting the standards of paragraph (a) of this section applies for certification review, the Service will have the discretion, after a review of the

school's application, to allow the school to enroll in SEVIS without requiring an on-site visit prior to enrollment. If the Service permits such a school to enroll in SEVIS prior to completion of the on-site visit, the on-site visit must be completed prior to May 14, 2004.

(f) Schools that are not eligible to apply for preliminary enrollment in SEVIS under this section—including flight schools—will have to apply for certification under the Interim Certification Rule, pay the certification fee, and undergo a full certification review including an on-site visit, prior to being allowed to enroll in SEVIS.

[67 FR 44346, July 1, 2002]

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* The following aliens are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F-1 or F-3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language-training institution including private elementary and secondary schools and public secondary schools, the amount of \$200;

(2) An alien who applies for J-1 status in order to commence participation in an exchange visitor program designated by the Department of State (DoS), the amount of \$180, with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M-1 or M-3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of \$200.

(b) *Aliens not subject to a fee.* No SEVIS fee is required with respect to:

(1) A J–1 exchange visitor who is coming to the United States as a participant in an exchange visitor program sponsored by the Federal government, identified by a program identifier designation prefix of G–1, G–2, G–3, or G–7;

(2) Dependents of F, M, or J nonimmigrants. The principal alien must pay the fee, when required under this section, in order for his/her qualifying dependents to obtain F–2, J–2, or M–2 status. However, an F–2, J–2, or M–2 dependent is not required to pay a separate fee under this section in order to obtain that status or during the time he/she remains in that status.

(3) A nonimmigrant described in paragraph (a) of this section whose Form I–20 or Form DS–2019 for initial attendance was issued on or before August 31, 2004.

(c) *Special Fee for Certain J–1 Nonimmigrants.* A J–1 exchange visitor coming to the United States as an au pair, camp counselor, or participant in a summer work/travel program is subject to a fee of \$35.

(d) *Time for payment of SEVIS fee.* An alien who is subject to payment of the SEVIS fee must remit the fee directly to DHS as follows:

(1) An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or to commence participation in a Department of State-designated exchange visitor program, must pay the fee to DHS before issuance of the visa.

(2) An alien who is exempt from the visa requirement described in section 212(d)(4) of the Act must pay the fee to DHS before the alien applies for admission at a U.S. port-of-entry to begin initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange visitor program.

(3) A nonimmigrant alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 must pay the fee to DHS before the alien is granted the change of nonimmigrant status, except as provided in paragraph (e)(4) of this section.

(4) A J–1 nonimmigrant who is applying for a change of program category within the United States, in accordance

with 22 CFR 62.42, must pay the fee associated with that new category, if any, prior to being granted such a change.

(5) A J–1 nonimmigrant initially granted J–1 status to participate in a program sponsored by the Federal government, as defined in paragraph (b)(1) of this section, and transferring in accordance with 22 CFR 62.42 to a program that is not similarly sponsored, must pay the fee associated with the new program prior to completing the transfer.

(6) A J–1 nonimmigrant who is applying for reinstatement after a substantive violation of status, or who has been out of program status for longer than 120 days but less than 270 days during the course of his/her program must pay a new fee to DHS, if applicable, prior to being granted a reinstatement to valid J–1 status.

(7) An F or M student who is applying for reinstatement of student status because of a violation of status, and who has been out of status for a period of time that exceeds the presumptive ineligibility deadline set forth in 8 CFR 214.2(f)(16)(i)(A) or (m)(16)(i)(A), must pay a new fee to DHS prior to being granted a return to valid status.

(8) An F–1, F–3, M–1, or M–3 nonimmigrant who has been absent from the United States for a period that exceeds 5 months in duration, and wishes to reenter the United States to engage in further study in the same course of study, with the exception of students who have been working toward completion of a U.S. course of study in authorized overseas study, must pay a new fee to DHS prior to being granted student status.

(e) *Circumstances where no new fee is required.* (1) Extension of stay, transfer, or optional practical training for students. An F–1, F–3, M–1, or M–3 nonimmigrant is not required to pay a new fee in connection with:

(i) An application for an extension of stay, as provided in 8 CFR 214.2(f)(7) or (m)(10);

(ii) An application for transfer, as provided in 8 CFR 214.2(f)(8) or (m)(11);

(iii) A change in educational level, as provided in 8 CFR 214.2(f)(5)(ii); or

Department of Homeland Security

§ 214.13

(iv) An application for post-completion practical training, as provided in 8 CFR 214.2(f)(10)(ii) or (m)(14).

(2) Extension of program or transfer for exchange visitors. A J-1 nonimmigrant is not required to pay a new fee in connection with:

(i) An application for an extension of program, as provided in 22 CFR 62.43; or

(ii) An application for transfer of program, as provided in 22 CFR 62.42.

(3) Visa issuance for a continuation of study. An F-1, F-3, J-1, M-1, or M-3 nonimmigrant who has previously paid the fee is not required to pay a new fee in order to be granted a visa to return to the United States as a continuing student or exchange visitor in a single course of study, so long as the nonimmigrant is not otherwise required to pay a new fee in accordance with the other provisions in this section.

(4) Certain changes in student classification.

(i) No fee is required for changes between the F-1 and F-3 classifications, and no fee is required for changes between the M-1 and M-3 classifications.

(ii) Institutional reclassification. DHS retains the discretionary authority to waive the additional fee requirement when a nonimmigrant changes classification between F and M, if the change of status is due solely to institutional reclassification by the Student and Exchange Visitor Program during that nonimmigrant's course of study.

(5) Re-application following denial of application by consular officer. An alien who fully paid a SEVIS fee in connection with an initial application for an F-1, F-3, M-1, or M-3 visa, or a J-1 visa in a particular program category, whose initial application was denied, and who is reapplying for the same status, or the same J-1 exchange visitor category, within 12 months following the initial notice of denial is not required to repay the SEVIS fee.

(6) Re-application following denial of an application for a change of status. A nonimmigrant who fully paid a SEVIS fee in connection with an initial application for a change of status within in the United States to F-1, F-3, M-1, or M-3 classification, or for a change of status to a particular J-1 exchange visitor category, whose initial application

was denied, and who is granted a motion to reopen the denied case is not required to repay the SEVIS fee if the motion to reopen is granted within 12 months of receipt of initial notice of denial.

(f) [Reserved]

(g) *Procedures for payment of the SEVIS fee.* (1) *Options for payment.* An alien subject to payment of a fee under this section may pay the fee by any procedure approved by DHS, including:

(i) Submission of Form I-901, to DHS by mail, along with the proper fee paid by check, money order, or foreign draft drawn on a financial institution in the United States and payable in United States currency, as provided by 8 CFR 103.7(a)(1);

(ii) Electronic submission of Form I-901 to DHS using a credit card or other electronic means of payment accepted by DHS; or,

(iii) A designated payment service and receipt mechanism approved and set forth in future guidance by DHS.

(2) *Receipts.* DHS will provide a receipt for each fee payment under paragraph (g)(1) of this section until such time as DHS issues a notice in the FEDERAL REGISTER that paper receipts will no longer be necessary. Further receipt provisions include:

(i) DHS will provide for an expedited delivery of the receipt, upon request and receipt of an additional fee;

(ii) If payment was made electronically, both DHS and the Department of State will accept a properly completed receipt that is printed-out electronically, in lieu of the receipt generated by DHS;

(iii) If payment was made through an approved payment service, DHS and the Department of State will accept a properly completed receipt issued by the payment service, in lieu of the receipt generated by DHS.

(3) *Electronic record of fee payment.* DHS will maintain an electronic record of payment for the alien as verification of receipt of the required fee under this section. If DHS records indicate that the fee has been paid, an alien who has lost or did not receive a receipt for a fee payment under this section will not be denied an immigration benefit, including visa issuance or admission to the United States, solely because of a

failure to present a paper receipt of fee payment.

(4) *Third-party payments.* DHS will accept payment of the required fee for an alien from an approved school or a designated exchange visitor program sponsor, or from another source, in accordance with procedures approved by DHS.

(h) *Failure to pay the fee.* The failure to pay the required fee is grounds for denial of F, M, or J nonimmigrant status or status-related benefits. Payment of the fee does not preserve the lawful status of any F, J, or M nonimmigrant that has violated his or her status in some other manner.

(1) For purposes of reinstatement to F or M status, failure to pay the required fee will be considered a “willful violation” under 8 CFR 214.2(f)(16) or (m)(16), unless DHS determines that there are sufficient extenuating circumstances (as determined at the discretion of the Student and Exchange Visitor Program).

(2) For purposes of reinstatement to valid J program status, failure to pay the required fee will not be considered a “minor or technical infraction” under 22 CFR 62.45.

[69 FR 39825, July 1, 2004; 69 FR 41388, July 9, 2004, as amended at 73 FR 55704, Sept. 26, 2008]

§214.14 Alien victims of certain qualifying criminal activity.

(a) *Definitions.* As used in this section, the term:

(1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106-386, 114 Stat. 1464, (2000), amended by Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have

criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

(4) *Indian Country* is defined as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

(6) *Military Installation* means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

(7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.

(8) *Physical or mental abuse* means injury or harm to the victim’s physical person, or harm to or impairment of

the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

(10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

(12) *U nonimmigrant status certification* means Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(13) *U interim relief* refers to the interim benefits that were provided by

USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she

demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or

failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U non-immigrant status*—(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, by mail, Form I-918, "Petition for U Nonimmigrant Status," applicable biometric fee (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint

Department of Homeland Security

§ 214.14

motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the

United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

(3) *Biometric capture.* All petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

(5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I-918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I-918 a list of non-governmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.

(i) *Approval of Form I-918, generally.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918. For a petitioner who is within the United States, USCIS also will concurrently grant U-1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS’ approval of Form I-918. A petitioner who is subject to an order of exclusion, deportation, or re-

moval issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(A) *Notice of Approval of Form I-918 for U-1 petitioners within the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I-797, “Notice of Action,” and include Form I-94 (see §1.4), “Arrival-Departure Record,” indicating U-1 nonimmigrant status.

(B) *Notice of Approval of Form I-918 for U-1 petitioners outside the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from outside the United States, USCIS will notify the alien of such approval on Form I-797, “Notice of Action,” and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.

(ii) *Denial of Form I-918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I-918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I-918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS’ final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS’ denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U-1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, "Arrival-Departure Record," to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U-1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I-765 in accordance with the instructions to the form.

(d) *Annual cap on U-1 nonimmigrant status—(1) General.* In accordance with section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) *Waiting list.* All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year

will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

(3) *Unlawful presence.* During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.

(e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification—(1) General.* The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

(f) *Admission of qualifying family members*—(1) *Eligibility*. An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility

for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 nonimmigrant status. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

(2) *Filing procedures*. A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date. An alien who has been granted U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I-918, Supplement A for each family member. All Forms I-918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I-918, Supplement A that are not filed at the same time as Form I-918 but are filed at a later date must be accompanied by a copy of the Form I-918 that was filed by the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U-1 nonimmigrant status, as applicable.

(i) Qualifying family members in pending immigration proceedings. The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I-918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) Qualifying family members with final orders of removal, deportation, or exclusion. An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-2, U-3, U-4, or U-5 nonimmigrant status directly with USCIS. The filing of a petition for U-2, U-3, U-4, or U-5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.

(3) *Initial evidence.* Form I-918, Supplement A, must include the following initial evidence:

(i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;

(ii) If the qualifying family member is inadmissible, Form I-192, "Application for Advance Permission to Enter as a Non-Immigrant," in accordance with 8 CFR 212.17.

(4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

(i) If the U-1 principal alien proves that he or she has become the parent of a child after Form I-918 was filed, the child shall be eligible to accompany or follow to join the U-1 principal alien.

(ii) If the principal alien was under 21 years of age at the time he or she filed Form I-918, and filed Form I-918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no

longer under 18 years of age at the time of adjudication.

(5) *Biometric capture and evidentiary standards.* The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.

(6) *Decision.* USCIS will issue a written decision approving or denying Form I-918, Supplement A and send notice of this decision to the U-1 principal petitioner. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U-2, U-3, U-4, or U-5 nonimmigrant status. USCIS will notify the principal of such approval on Form I-797, "Notice of Action," with Form I-94, "Arrival-Departure Record," indicating U-2, U-3, U-4, or U-5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U-2, U-3, U-4, or U-5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I-

918, Supplement A unless it has approved the principal alien's Form I-918.

(ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I-797. USCIS will forward the approved Form I-918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.

(iii) *Denial of the Form I-918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may appeal the denial of Form I-918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS' final denial of Form I-918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239 of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(7) *Employment authorization.* An alien granted U-2, U-3, U-4, or U-5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I-765, "Application for Employment Authorization," with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I-765 may be filed concurrently with Form I-918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I-765 only may be filed

after admission to the United States in U nonimmigrant status.

(g) *Duration of U nonimmigrant status—(1) In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status.* (i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

(ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.

(h) *Revocation of approved petitions for U nonimmigrant status—(1) Automatic revocation.* An approved petition for U-1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

Department of Homeland Security

§ 214.15

(2) *Revocation on notice.* (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing;

(B) Approval of the petition was in error;

(C) Where there was fraud in the petition;

(D) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the relationship to the principal petitioner has terminated; or

(E) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the principal U-1's nonimmigrant status is revoked.

(ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.

(3) *Appeal of a revocation of approval.* A revocation on notice may be appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.

(4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I-918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I-918, Supplement A filed for qualifying family members seeking U-2, U-3, U-4, or U-5 nonimmigrant status. Revocation of a qualifying family

member's approved Form I-918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I-918 or Form I-918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

[72 FR 53036, Sept. 17, 2007, as amended at 72 FR 54813, Sept. 27, 2007; 74 FR 55738, Oct. 28, 2009; 78 FR 18472, Mar. 27, 2013]

§ 214.15 Certain spouses and children of lawful permanent residents.

(a) *Aliens abroad.* Under section 101(a)(15)(v) of the Act, certain eligible spouses and children of lawful permanent residents may apply for a V nonimmigrant visa at a consular office abroad and be admitted to the United States in V-1 (spouse), V-2 (child), or V-3 (dependent child of the spouse or child who is accompanying or following to join the principal beneficiary) nonimmigrant status to await the approval of:

(1) A relative visa petition;

(2) The availability of an immigrant visa number; or

(3) Lawful permanent resident (LPR) status through adjustment of status or an immigrant visa.

(b) *Aliens already in the United States.* Eligible aliens already in the United States may apply to the Service to obtain V nonimmigrant status for the same purpose. Aliens in the United States in V nonimmigrant status are entitled to reside in the United States as V nonimmigrants and obtain employment authorization.

(c) *Eligibility.* Subject to section 214(o) of the Act, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) of the Act) of

an immigrant visa petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, may apply for V nonimmigrant status if:

(1) Such immigrant visa petition has been pending for 3 years or more; or

(2) Such petition has been approved, and 3 or more years have passed since such filing date, in either of the following circumstances:

(i) An immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) of the Act; or

(ii) The alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 of the Act, pursuant to the approval of such petition, remains pending.

(d) *The definition of "pending petition."* For purposes of this section, a pending petition is defined as a petition to accord a status under section 203(a)(2)(A) of the Act that was filed with USCIS under section 204 of the Act on or before December 21, 2000, and has not been adjudicated. In addition, the petition must have been properly filed according to 8 CFR 103.2(a), and if, subsequent to filing, USCIS returns the petition to the applicant for any reason or makes a request for evidence or issues a notice of intent to deny under 8 CFR 103.2(b), the petitioner must comply with the request within the time period set by USCIS. If USCIS denies a petition but the petitioner appeals that decision, the petition will be considered pending until the administrative appeal is decided by USCIS. A petition rejected by USCIS as not properly filed is not considered to be pending.

(e) *Classification process for aliens outside the United States*—(1) *V nonimmigrant visa.* An eligible alien may obtain a V nonimmigrant visa from the Department of State at a consular office abroad pursuant to the procedures set forth in 22 CFR 41.86.

(2) *Aliens applying for admission to the United States as a V nonimmigrant at a port-of-entry.* Aliens applying under section 235 of the Act for admission to the United States at a port-of-entry as a V nonimmigrant must have a visa in the appropriate category. Such aliens

are exempt from the ground of inadmissibility under section 212(a)(9)(B) of the Act.

(f) *Application by aliens in the United States.* An alien described in paragraph (c) of this section who is in the United States may apply to the Service to obtain V nonimmigrant status pursuant to the procedures set forth in this section and 8 CFR part 248. The alien must be admissible to the United States, except that, in determining the alien's admissibility in V nonimmigrant status, sections 212(a)(6)(A), (a)(7), and (a)(9)(B) of the Act do not apply.

(1) *Contents of application.* To apply for V nonimmigrant status, an eligible alien must submit:

(i) Form I-539, Application to Extend/Change Nonimmigrant Status, with the fee required by §103.7(b)(1) of this chapter;

(ii) The fingerprint fee as required by §103.2(e)(4) of this chapter;

(iii) Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(iv) Evidence of eligibility as described by Supplement A to Form I-539 and in paragraph (f)(2) of this section.

(2) *Evidence.* Supplement A to Form I-539 provides instructions regarding the submission of evidence. An alien applying for V nonimmigrant status with the Service should submit proof of filing of the immigrant petition that qualifies the alien for V status. Proof of filing may include Form I-797, Notice of Action, which serves as a receipt of the petition or as a notice of approval, or a receipt for a filed petition or notice of approval issued by a local district office. If the alien does not have such proof, the Service will review other forms of evidence, such as correspondence to or from the Service regarding a pending petition. If the alien does not have any of the items previously mentioned in this paragraph, but believes he or she is eligible for V nonimmigrant status, he or she should state where and when the petition was filed, the name and alien number of the petitioner, and the names of all beneficiaries (if known).

(g) *Period of admission*—(1) *Spouse of an LPR.* An alien admitted to the United States in V-1 nonimmigrant

status (or whose status in the United States is changed to V-1) will be granted a period of admission not to exceed 2 years.

(2) *Child of an LPR or derivative child.* An alien admitted to the United States in V-2 or V-3 nonimmigrant status (or whose status in the United States is changed to V-2 or V-3) will be granted a period of admission not to exceed 2 years or the day before the alien's 21st birthday, whichever comes first.

(3) *Extension of status.* An alien may apply to the Service for an extension of V nonimmigrant status pursuant to this part and 8 CFR part 248. Aliens may apply for the extension of V nonimmigrant status, submitting Form I-539, and the associated filing fee, on or before 120 days before the expiration of their status. If approved, the Service will grant an extension of status to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status for a period not to exceed 2 years, or in the case of a child in V-2 or V-3 status, the day before the alien's 21st birthday, whichever comes first.

(4) *Special rules.* The following special rules apply with respect to aliens who have a current priority date in the United States, but do not have a pending application for an immigrant visa abroad or an application to adjust status.

(i) For an otherwise eligible alien who applies for admission to the United States in a V nonimmigrant category at a designated Port-of-Entry and has a current priority date but does not have a pending immigrant visa abroad or application for adjustment of status in the United States, the Service will admit the alien for a 6-month period (or to the date of the day before the alien's 21st birthday, as appropriate).

(ii) For such an alien in the United States who applies for extension of V nonimmigrant status, the Service will grant a one-time extension not to exceed 6 months.

(iii) If the alien has not filed an application, either for adjustment of status or for an immigrant visa within that 6-month period, the alien cannot extend or be admitted or readmitted to V nonimmigrant status. If the alien does file an application, either for ad-

justment of status or for an immigrant visa within the time allowed, the alien will continue to be eligible for further extensions of V nonimmigrant status as provided in this section while that application remains pending.

(h) *Employment authorization.* An alien in V nonimmigrant status may apply to the Service for employment authorization pursuant to this section and §274a.12(a)(15) of this chapter. An alien must file Form I-765, Application for Employment Authorization, with the fee required by 8 CFR 103.7. The Service will grant employment authorization to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status valid for a period equal to the alien's authorized admission as a V nonimmigrant.

(i) *Travel abroad; unlawful presence—*
(1) *V nonimmigrant status in the United States.* An alien who applies for and obtains V nonimmigrant status in the United States will be issued Form I-797, Notice of Action, indicating the alien's V status in the United States. Form I-797 does not serve as a travel document. If such an alien departs the United States, he or she must obtain a V visa from a consular office abroad in order to be readmitted to the United States as a V nonimmigrant. This visa requirement, however, does not apply if the alien traveled to contiguous territory or adjacent islands, possesses another valid visa, and is eligible for automatic revalidation.

(2) *V nonimmigrants with a pending Form I-485.* An alien in V nonimmigrant status with a pending Form I-485 (Application to Register Permanent Residence or Adjust Status) that was properly filed with the Service does not have to obtain advance parole in order to prevent the abandonment of that application when the alien departs the United States.

(3) *Unlawful presence—*(i) *Non-immigrant admission.* An alien otherwise eligible for admission as a V nonimmigrant is not subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act. This is true even if the alien had accrued more than 180 days of unlawful presence in the United States and is applying for admission as a nonimmigrant after travel abroad.

(ii) *Permanent resident status.* A V nonimmigrant alien is subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act when applying for an immigrant visa or for adjustment of status to that of a lawful permanent resident. Therefore, a departure from the United States at any time after having accrued more than 180 days of unlawful presence will render the alien inadmissible under that section for the purpose of adjustment of status or admission as an immigrant, unless he or she has obtained a waiver under section 212(a)(9)(B)(v) of the Act or falls within one of the exceptions in section 212(a)(9)(B)(iii) of the Act.

(j) *Termination of status—(1) General.* The status of an alien admitted to the United States as a V nonimmigrant under section 101(a)(15)(V) of the Act shall be automatically terminated 30 days following the occurrence of any of the following:

(i) The denial, withdrawal, or revocation of the Form I-130, Petition for Immediate Relative, filed on behalf of that alien;

(ii) The denial or withdrawal of the immigrant visa application filed by that alien;

(iii) The denial or withdrawal of the alien's application for adjustment of status to that of lawful permanent residence;

(iv) The V-1 spouse's divorce from the LPR becomes final; or

(v) The marriage of an alien in V-2 or V-3 status.

(2) *Dependents.* When a principal alien's V nonimmigrant status is terminated, the V nonimmigrant status of any alien listed as a V-3 dependent or who is seeking derivative benefits is also terminated.

(3) *Appeals.* If the denial of the immigrant visa petition is appealed, the alien's V nonimmigrant status does not terminate until 30 days after the administrative appeal is dismissed.

(4) *Violations of status.* Nothing in this section precludes the Service from immediately initiating removal proceedings for other violations of an alien's V nonimmigrant status.

(k) *Naturalization of the petitioner.* If the lawful permanent resident who filed the qualifying Form I-130 immi-

grant visa petition subsequently naturalizes, the V nonimmigrant status of the spouse and any children will terminate after his or her current period of admission ends. However, in such a case, the alien spouse or child will be considered an immediate relative of a U.S. citizen as defined in section 201(b) of the Act and will immediately be eligible to apply for adjustment of status and related employment authorization. If the V-1 spouse or V-2 child had already filed an application for adjustment of status by the time the LPR naturalized, a new application for adjustment will not be required.

(l) *Aliens in proceedings.* An alien who is already in immigration proceedings and believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

[66 FR 46702, Sept. 7, 2001, as amended at 72 FR 19107, Apr. 17, 2007]

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

215.1 Definitions.

215.2 Authority of departure-control officer to prevent alien's departure from the United States.

215.3 Alien whose departure is deemed prejudicial to the interests of the United States.