

## **9 FAM APPENDIX H, 100 DEPARTMENT OF HOMELAND SECURITY (DHS)**

*(CT:VISA-1118; 11-17-2008)  
(Office of Origin: CA/VO/F/P)*

### **9 FAM APPENDIX H, 101 EXTENSION OF STAY**

*(CT:VISA-1118; 11-17-2008)*

A nonimmigrant in the United States who wishes to remain beyond the period of time for which initially admitted by *the* Department of Homeland Security (DHS) must apply to DHS for an extension of stay before the authorized period of stay expires. DHS may grant extensions of stay for periods not exceeding the maximum periods of initial admission set forth in *the reciprocity schedule* for a lesser period determined by DHS to be appropriate.

### **9 FAM APPENDIX H, 102 FEES FOR EXTENSION OF STAY**

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There is a fee for an extension of stay application in most nonimmigrant classifications. Some visa applicants' stay will be restricted to less than they might need because of the limited duration of their passports (see 9 FAM 41.104 N2), and they may therefore have to seek an extension. Information on fees is available at *the U.S. Citizenship and Immigration Services (USCIS) Web site*.

### **9 FAM APPENDIX H, 103 EXTENSION OF STAY FOR NONIMMIGRANTS IN H OR L STATUS**

*(CT:VISA-1118; 11-17-2008)*

In every case in which an employer or trainer seeks H-1, H-2, H-3, or L-1 classification initially for an alien or group of aliens, DHS requires the filing of a petition, Form I-129, *Petition for a Nonimmigrant Worker*, or Form I-129-S, *Nonimmigrant Petition Based on Blanket L Petition*, as appropriate, in the alien(s)' behalf. Aliens admitted to the *United States* in H or L status, or who acquire that status after admission, are authorized a period of stay not to exceed the validity of the petition. Extensions may be granted, following application by the employer on Form I-129 for extension of both petition validity and stay by the alien, if they intend to continue performing the same services for, or receiving training from, the same petitioner.

## **9 FAM APPENDIX H, 104 USE OF FORM I-797, NOTICE OF ACTION**

*(CT:VISA-1118; 11-17-2008)*

DHS uses Form I-797, Notice of Action, *when a change of status or extension of stay is approved for an H or L Alien. The I-797-A is sent along with the requested classification. The I-797-B is used to notify the Department of State or U.S. Customs and Border Protection (CBP) of an approved petition. The I-797-C notifies* the petitioner that the petition is approved or an extension is granted. The petitioner may furnish the form to the employee to use to facilitate entry into the United States in H or L status, either initially or after a temporary absence abroad during the authorized stay in H or L status. *The Form I-797 is also used for a blanket L approval.*

## **9 FAM APPENDIX H, 105 CHANGE IN NONIMMIGRANT CLASSIFICATION AFTER ADMISSION**

*(CT:VISA-1118; 11-17-2008)*

If an alien admitted into the United States in one nonimmigrant classification desires to engage in another principal activity (one appropriate to a different nonimmigrant classification), the alien may apply to DHS for a change of nonimmigrant classification pursuant to INA 248. *Information on how to submit a change of classification can be found at the USCIS Web site.* An alien admitted under certain nonimmigrant classes is, however, ineligible for a change of status, specifically one entering:

- (1) Under INA 101(a)(15)(C), (D), or (K);

- (2) As an alien in transit without a visa under INA 238(d);
- (3) Under INA 101(a)(15)(J) for graduate medical education or training (whether or not the foreign residence requirement is applicable);
- (4) Under INA 101(a)(15)(J) (other than under (3) above) who is subject to the foreign residence requirement and for whom that requirement has not been waived, unless the change is to a classification under INA 101(a)(15)(A) or (G);
- (5) Under the Visa Waiver Program; or
- (6) Under the Guam Visa Waiver *Program*.

## **9 FAM APPENDIX H, 106 INQUIRIES ABOUT STATUS OF PETITIONS**

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Posts normally should not send *messages* to the Department or directly to DHS, whether or not by interested party, inquiring about the status of petitions. As an alternative, the consular officer should advise an alien seeking such assistance to ask the petitioner to obtain the information on the pending visa petition directly from DHS. Petitioners should direct such information inquiries to the Service Center with which the petition was filed. Posts may submit to the Department cases which have public relations significance, however, stating the reasons for such action in the post's telegram.

## **9 FAM APPENDIX H, 107 ACCEPTANCE OF EMPLOYMENT BY DEPENDENT OF TREATY ALIEN**

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While DHS is not in a position to authorize the nonimmigrant spouse and children of a treaty trader to accept employment while in E status, the dependents will not be deemed to be deportable for having violated status if employed. So long as the principal E nonimmigrant is maintaining status, no action will be taken to require their departure. However, DHS does consider aliens who accept such unauthorized employment to be ineligible for later adjustment of status to permanent resident. (See 8 CFR 245.1(b).)