

9 FAM PART IV APPENDIX H, 100 DEPARTMENT OF HOMELAND SECURITY (DHS)

*(CT:VISA-693; 02-09-2005)
(Office of Origin; CA/VO/F/P)*

9 FAM 101 EXTENSION OF STAY

(CT:VISA-693; 02-09-2005)

A nonimmigrant in the United States who wishes to remain beyond the period of time for which initially admitted by *Department of Homeland Security (DHS)* must apply to the nearest *DHS* office for an extension of stay, not less than 15 nor more than 60 days 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 9 FAM 41.112 N3 or for a lesser period determined by *DHS* to be appropriate.

9 FAM 102 FEES FOR EXTENSION OF STAY

(CT:VISA-693; 02-09-2005)

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 USCIS.gov.*

9 FAM 103 EXTENSION OF STAY FOR NONIMMIGRANTS IN H OR L STATUS

(CT:VISA-693; 02-09-2005)

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-129S, Nonimmigrant Petition Based on Blanket L Petition as appropriate) in the alien(s)' behalf. Aliens admitted to the U.S. 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 104 USE OF FORM I-797, NOTICE OF ACTION

(CT:VISA-693; 02-09-2005)

DHS uses Form I-797, Notice of Action, (formerly Form I-171C, Notice of Approval of Nonimmigrant Visa Petition or of Extension of Stay of Nonimmigrant H or L Alien) to notify 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.

9 FAM 105 CHANGE IN NONIMMIGRANT CLASSIFICATION AFTER ADMISSION

(CT:VISA-693; 02-09-2005)

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 the *DHS* district director of the district of residence for a change of nonimmigrant classification pursuant to INA 248. 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 Pilot Program; or
- (6) Under the Guam Visa Waiver.

9 FAM 106 INQUIRIES ABOUT STATUS OF PETITIONS

(CT:VISA-693; 02-09-2005)

Posts normally should not send telegrams 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 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).)