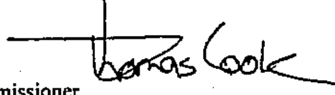
U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.9

425 I Street NW
Washington, DC 20536

JUN 18 2001

MEMORANDUM FOR: All Service Center Directors
All District Directors
All Officers-in-Charge



FROM: Thomas Cook
Acting Assistant Commissioner,
Office of Programs

SUBJECT: Travel After Filing a Request for a Change of Nonimmigrant Status

The purpose of this memorandum is to correct an article published in the March 26, 2001, issue of Interpreter Releases. Quoting a statement by the Immigration and Naturalization Service (INS) officer, the article advises that an alien on whose behalf a request for a change of nonimmigrant status has been filed may travel outside of the United States and the request for a change of status would not be considered abandoned. This is not an accurate interpretation of current INS policy.

INS officers are reminded that an alien on whose behalf a change of nonimmigrant status has been filed and who travels outside the United States before the request is adjudicated is considered to have abandoned the request for a change of nonimmigrant status. This has been, and remains, the INS's long-standing policy. The Office of Adjudications has described this particular policy in numerous letters and correspondence with the public and the legal community.

If at any time it comes to the attention of the INS that an alien on whose behalf a request for a change of nonimmigrant status has been filed has traveled outside of the United States during the pendency of the request for a change of status, the application or petition should be denied pursuant to 8 CFR 248.3(g).

Attached for your information is a copy of the article from the March 26, 2001, issue of Interpreter Releases. Please note that the reference contained in the article to an October 20, 1999, letter written by Thomas Simmons is not germane to this issue because it relates to the filing of an extension of temporary stay, not a request for a change of nonimmigrant status. Current INS policy does not preclude an alien from traveling outside of the United States while a request for an extension of temporary stay is pending with the INS.

First highlighted word:simmons
Clicking "<<" takes you to the previous hit, Clicking ">>" takes you to the next hit.

Advisory Letter from INS on Filing for H-1B Change of Employer
Advisory letter from INS concerning a filing for H-1B change of employer and validity date of the petition subsequent to travel.

September 27, 1999

Thomas W. << *Simmons*>>
Branch Chief
Business and Services Trade Branch
425 1 Street NW
Washington, D.C. 20536

Dear Mr. << *Simmons*>> :

I would like to pose a simple question to which I have received different answers over the years. The best way to ask the question is to give you a hypothetical.

Alien is employed with company "A". She is the beneficiary of an H-1B visa petition filed by company "A" which is valid until December 31, 2000. She also has a valid H-1B visa stamp valid until December 31, 2000. She gets a job offer with company "B" and company "B" files a "change of employer" H-1B petition requesting an extension of stay on July 25, 1999. While the new petition is pending, the alien travels outside the U.S., reenters using her current visa on August 18, 1999, and resumes employment with company "A". She is issued a new I-94 valid until December 31, 2000. On September 15, 1999, the INS approves the petition and extension of stay filed by company "B" and the petition is valid until December 27, 2001.

The alien joins company "B " and the question is which I-94 is controlling? Is it the I-94 issued to her on last trip into the US which is valid until December 31, 2000 or is it the new I-94 issued by the INS when the petition and extension of stay filed by company "B " was approved by the INS and is valid until December 27, 2001.

Thank you for your time and attention to this matter.

Sincerely

Norman C. Plotkin
Attorney at Law
NCP/dkw

October 20, 1999

Norman C. Plotkin, Esq.
JACKSON & HERTOGS

170 Columbus Avenue, Suite 400
San Francisco, CA 94133

Dear Mr. Plotkin:

This refers to your letter of September 27 in which you pose a question concerning the H-1B nonimmigrant classification.

In the scenario described in your letter an H- I B alien is employed by "Company A" valid until December 31,2000. "Company B" files a subsequent H-1B petition on behalf of the alien. While Company B's petition is pending, the alien departs the United States and is issued another I-94 valid until December 31, 2000 consistent with the initial petition filed by Company A. After the alien's admission to the United States, the INS approves the petition filed by Company B with a validity date until December 27, 2001. You question which validity date is controlling, the validity date of the first petition filed by Company A or the validity date of the petition filed by Company B.

Based on the information furnished in your letter, the alien may remain in the United States until December 27, 2001 as an H-1B nonimmigrant. The alien's departure and admission to the United States has no bearing on the validity period of the petition filed by Company B.

I trust this response satisfactorily addresses your concerns.

Sincerely,

Thomas W. << *Simmons*>>
Branch Chief
Business and Trade Services

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