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Susan J. Cohen

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July 16, 2004

VIA FEDERAL EXPRESS

Mr. Efrén Hernandez
U.S. Citizenship and Immigration Services
425 Eye Street, NW
Washington, DC 20536

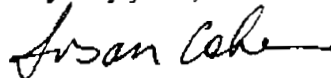
Re: Request for Guidance

Dear Mr. Hernandez:

I am seeking your guidance concerning the "last action rule". Assume a person files for a change of status from F-1 to H-1B status in July, 2004 and the H-1B petition and change of status request are both approved in August, 2004, but effective December 1, 2004. Assume further that the individual travels abroad on September 1, 2004 and returns to the U.S. on September 15, 2004 in valid F-1 status. If the person remains in the U.S. from September 15, 2004 until December 1, 2004, will that individual's change of status to H-1B automatically take effect on December 1, 2004? If not, what must the individual do to effectuate the change of status?

I look forward to hearing from you.

Very truly yours,



Susan J. Cohen

SJC:ejw

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

HQOPRD 70/6.2

AUG 18 2004

MS. Susan J. Cohen
Mintz Levin Cohn Ferris Glovsky and Popeo PC
One Financial Center
Boston, MA 02111

Dear Ms. Cohen:

Thank you for your July 16, 2004 correspondence in which you pose a question about the effective date for an F-1 visa holder's change of status to H-1B.

A change of status takes effect automatically on the effective date noted on the Notice of Action (Form I-797), even if there is an intervening admission as in your proposed scenario. The Form I-797 should have a tear-off Form I-94 that would be proof of the change of status. The "Last Action Rule" does not affect the change of status in this case because the last action is the taking effect of the change of status.

If you have questions regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Efraim Hernandez".

Efraim Hernandez
Chief, Business and Trade Services Branch
Office of Adjudications