LEXSEE 56 FED REG 31554

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

AGENCY: Immigration and Naturalization Service, Justice.

8 CFR Part 214

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

[INS No. 1417-91]

56 FR 31553

July 11, 1991

ACTION: Proposed rule.

SUMMARY: This proposed rule implements provisions of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, as they relate to temporary alien workers seeking nonimmigrant classification and admission to the United States under sections 101(a)(15) (H), (L), (O), and (P) of the Immigration and Nationality Act (Act), *8 U.S.C. 1101.* This rule also contains technical amendments which reflect the Service's operating experience under the H and L classifications. This rule will conform Service policy to the intent of Congress as it relates to these classifications, implement new nonimmigrant classifications and requirements established by Public Law 101-649, and clarify for businesses and the general public requirements for classification, admission, and maintenance of status.

DATES: Written comments must be submitted on or before August 12, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS No. 1417-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, telephone (202) 514-3946.

TEXT: SUPPLEMENTARY INFORMATION: The discussion that follows relates to the major changes which Public Law 101-649 made to the H and L nonimmigrant classifications, and the major requirements for the newly established O and P nonimmigrant classifications.

H Visa Classification

Public Law 101-649 significantly changed the definition of the H-1B. category and imposed a numerical limit classification on some H nonimmigrants. Under existing law, the H-1B nonimmigrant classification applies to "aliens of distinguished merit and ability." Aliens who are members of the professions (except certain foreign physicians) and aliens who are prominent in their field are classifiable under current law as H-1B aliens of distinguished merit and ability. Public Law 101-649 significantly changed the definition of the H-1B classification by (1) creating two new nonimmigrant O and P classifications, (2) changing the reference to aliens who are members of the professions to aliens in specialty occupations, (3) requiring approval of a labor condition application by the Secretary of Labor before the At-

torney General can grant H-1B classification, and (4) removing the restriction on H-1B classification for foreign physicians who are coming to the United States to perform patient care, rather than to do teaching or research at a public or private nonprofit institution. Since the restriction on H-1B classification for foreign physicians was eliminated, this rule proposes to remove the special requirements for physicians in existing H regulations at 8 CFR 2l4.2(h)(4)(v)(B).

Without specifying the appropriate nonimmigrant visa classification, section 222 of Public Law 101-649 provided for admission of aliens (1) who will perform services of an exceptional nature requiring exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by the Secretary of Defense, and in section 223, (2) aliens who will participate 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. This proposed rule provides that these workers will be classified as H-1B and H-3 nonimmigrants respectively, but will not be subject to the requirements for classification which apply to other H-1B or H-3 nonimmigrants. This rule proposes special eligibility requirements for aliens in DOD projects and special education exchange programs.

Public Law 101-649 imposed a numerical limit on the number of aliens who can be granted classification or issued visas each year under certain H classifications. This proposed rule provides at 8 CFR 214.2(h)(8)(ii) that aliens included in a new petition will be counted in the order that petitions are filed for purposes of the numerical limits. Aliens classified as H-1B in specialty occupations are limited to 65,000 per year; aliens classified as H-1B to work on DOD cooperative research and development projects or coproduction projects are limited to no more than 100 at any time; aliens classified as H-2B to perform nonagricultural work are limited to 66,000 per year; and aliens classified as H-3 participants in special education exchange programs are limited to 50 per year.

This proposed rule amends the Service's regulations at 8 CFR 214.2(h) to reflect all of the changes made by Public Law 101-649. The following further discusses some of the major changes to H regulations:

Removal of the Prominence Category

Under existing regulations the H-1B prominence category includes aliens who have sustained national or international acclaim and recognition in their field, aliens who have exceptional career achievement in business, and aliens who are unique or traditional artists. Public Law 101-649 replaced this category with two new nonimmigrant categories that have different qualifying standards. The new O classification applies to aliens who have extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in motion picture and television productions. The new P classification applies to certain artists, entertainers, and athletes. It may result that some aliens who qualified for H-1B classification under the prominence category in existing regulations, such as business persons with exceptional career achievement, may not qualify for H-1B or the new O or P classification under Public Law 101-649.

Aliens in a Specialty Occupation

The definition and standards for an alien in a specialty occupation mirror the Service's current requirements for aliens who are members of the professions. Public Law 101-649 amended section 214 of the Act to define specialty occupation as an occupation which requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) is required as a minimum for entry into the occupation in the United States. It further required the alien to have any required state license to practice in the occupation, the degree required for the occupation, or experience in the specialty equivalent to completion of the degree and recognition of expertise in the specialty through progressively responsible positions. This proposed rule amends regulations at 8 CFR 214.2(h)(4)(iii) to change all references to "profession" to "specialty occupation" and to specify the same standards for qualifying as an alien in a specialty occupation that were indicated for an alien who is a member of the professions under existing regulations.

Labor Condition Application

Public Law 101-649 made approval of a labor condition application by the Secretary of Labor under section 212(n) of the Act a prerequisite for approval of H-1B nonimmigrant classification by the Service. Under current law, the Service makes two determinations: whether a position offered is a professional one and whether the alien beneficiary qualifies as a member of the relating profession. Under the new law, the determination of whether a position involves a specialty occupation will be made by the Service when it adjudicates the petition, not by the Department of Labor when it

makes a determination on the labor condition application. The Department of Labor will consider only the specific requirements of the labor condition application.

L Visa Classification

The intent of Public Law 101-649 as it relates to the L classification was to broaden its utility for international companies. To comply with Congressional intent, this proposed rule adopts the more liberal definitions of manager and executive now specified in section 101(a)(44) (A) and (B) of the Act. The definitions are nearly the same as those in existing L regulations, except that Public Law 101-649 includes higher level management of an essential function under managerial capacity, and prohibits use of the number of employees as the only factor in determining managerial or executive capacity. The L regulations have also been modified to include a more liberal interpretation of specialized knowledge as defined in section 214(c)(2)(B) of the Act.

Under Public Law 101-649, an intracompany transferee may have been employed abroad continuously for one year by the same employer within the preceding three years.

The definition of affiliate at 8 CFR 214.2(l)(1)(ii)(L) is being modified by Public Law 101-649 to include international accounting firms which provide accounting services along with managerial and consulting services and which market their services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms.

Another significant change made by Public Law 101-649 was extension of the total period of stay for managers and executives to seven years. However, the period of stay for aliens in a specialized knowledge capacity was reduced from the possible six years at the present time to five years. This rule proposes to revise L regulations to reflect these time periods without any showing of extraordinary circumstances. The regulations also propose to provide at 8 CFR 214.2(l)(15) that when the 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 (and had such change in employment approved by the Service) for at least two years to be eligible for the total period of stay of seven years.

O Visa Classification

The new O visa classification established by Public Law 101-649 includes three categories of aliens. They are: O-1 aliens of extraordinary ability in the sciences, arts, education, business, or athletics, O-1 aliens who have extraordinary achievement in motion picture and television productions, and O-2 accompanying aliens to artists and athletes. The admission of an O-1 alien must substantially benefit the United States. This proposed rule requires an O-1 petition to be accompanied by an explanation of the economic, social, educational, cultural, or other benefit to the United States that will result from the alien's admission.

The O-1 classification for aliens of extraordinary ability requires a different and higher standard than the O-1 classification for aliens of extraordinary achievement in motion picture and television productions. Separate qualifying standards are reflected in this proposed rule. Extraordinary ability requires sustained national or international acclaim while extraordinary achievement could be a one-time extraordinary accomplishment.

A petition can only be approved for an event or performance. The Service intends to interpret the terms as broadly as possible. For example, the term event is meant to include an entire season of an opera company or an entire tour by a circus group.

The O-2 accompanying aliens must be coming to the United States to assist an O-1 artist or athlete in a specific event or performance, be an integral part of the performance, and have critical skills and experience with the O-1 artist or athlete. When the event involves a motion picture or television production, the O-2 accompanying alien must have a pre-existing, longstanding working relationship with the O-1 alien, or it must be demonstrated that continuing participation of the accompanying alien is essential to successful completion of a production where significant principal photography will take place inside and outside the United States.

Public Law 101-649 requires the Attorney General to consult with peer groups, labor organizations, and/or management organizations before granting O-1 or O-2 classification. This proposed rule specifies procedures which encourage the petitioner to obtain a written advisory opinion from an appropriate organization prior to filing a petition with the

Service to ensure timely adjudication of an O-1 or O-2 petition. The rule recognizes that when the Service itself is required to obtain a written advisory opinion from an appropriate organization, considerably longer adjudication time will be required.

P Visa Classification

Public Law 101-649 establishes the new P nonimmigrant classification exclusively for athletes, artists, and entertainers and divides it into three distinct categories. They are: P-1 classification for internationally recognized athletes and members of internationally recognized entertainment groups; P-2 classification for artists or entertainers in a reciprocal exchange program; and P-3 classification for artists or entertainers in culturally unique programs. The P-1 and P-3 classifications share a numerical cap of 25,000 per year on the number of aliens who can be granted these classifications.

It is unclear from the statutory language of the P classifications whether Congress intended aliens who provide essential support to athletes, artists, and entertainers to be given P classification. As a practical matter, principal aliens in these occupations traditionally require a few to a large number of support personnel in order to successfully perform their services. For example, an internationally recognized athlete may be provided support by a manager and trainer. Musical groups, ballet companies, and theater groups may be supported by a large number of essential personnel in various occupations such as directors and make-up artists. The Service believes, from operating experience, that it would not be feasible for the petitioner to obtain H-2B classification for each support person because of timing and paperwork requirements. This proposed rule provides for P classification of essential support persons to P-1, P-2, and P-3 athletes, artists, and entertainers.

This rule incorporates the specific statutory requirements for each P classification and specifies the standards for qualifying under each. The discussion that follows reflects major requirements for the categories:

P-1 Classification for Internationally Recognized Athletes

The P-1 classification applies to athletes who are internationally recognized for their performance as an individual athlete or as a member of an internationally recognized athletic team. An employer must petition for the alien to come to the United States to participate in a specific athletic competition. When the petition involves an individual athlete, the period of stay may be for an initial period not to exceed five years, and may be extended for an additional five years for a total period of stay of 10 years. The period of stay for an athletic team is limited to the time required to complete the specific athletic competition. Consultation with labor organizations that have expertise in the specific field of athletics is required before the Service can grant P-1 classification.

P-1 Classification for Members of Internationally Recognized Entertainment Groups

The P-1 classification requires entertainment groups to have been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time which the Service proposes to be at least one year. An individual entertainer cannot qualify for P-1 classification, just as an entertainment group cannot qualify for O-1 classification. Pub. L. 101-649 requires each member of the entertainment group to have had a sustained and substantial relationship with the group over a period of at least one year and provide functions integral to the performance of the group. The group must be petitioned for by an employer to come to the United States for a specific performance, and may be admitted for a period of stay necessary to complete the performance. Consultation with labor organizations that have expertise in the specific field of entertainment is required before the Service can grant P-1 classification to members of an entertainment group.

P-2 Artist or Entertainer in a Reciprocal Exchange Program

Public Law 101-649 provides for an individual artist or entertainer (or artistic or entertainment group) to come to the United States to perform under a reciprocal exchange program that is between an organization or organizations in the United States and an organization in one or more foreign countries. The exchange program must provide for the temporary exchange of artists and entertainers between the United States and the foreign countries on an individual-for-individual or group-for-group basis. Since Public Law 101-649 requires the appropriate labor organization to ensure that there is reciprocity, this proposed rule requires the petitioner to show that an appropriate labor organization in the

United States was involved in negotiating, or has concurred with, arrangements for the reciprocal exchange of United States and foreign artists or entertainers. The sponsoring organization need not be an employer to petition for aliens under a reciprocal exchange program. The aliens are to be admitted for the specific event or performance and may not be readmitted unless the alien has remained outside the United States for at least three months after the date of his or her most recent admission. The Service can waive this requirement for individual artists or entertainers on tour where imposition of the requirement would cause undue hardship. Aliens under the P-2 classification will not be subject to a numerical limit.

P-3 Classification for Artists or Entertainers in Culturally Unique Programs

The Service interprets the P-3 classification for artists or entertainers in culturally unique programs under Public Law 101-649 as the replacement category for the existing H-1B prominence category for unique and traditional artists. This proposed rule duplicates the standards for that H-1B category for P-3 classification. Consultation with a labor organization that has expertise in the specific field of entertainment is required before the Service can grant P-3 classification. As with P-2 aliens, those classified as P-3 must remain outside the United States for three months after the date of the most recent admission, unless the Service waives the requirement.

General Statement on Potential Comments Regarding the O and P Categories

The Service wants to establish a procedure for the filing and adjudication of O and P petitions which will facilitate international travel effecting the entertainment, sports, and business communities of the United States. Therefore, the Service desires to obtain proposals and suggestions for streamlining the petitioning process for these nonimmigrant categories to minimize the paperwork essential to sound adjudications consistent with statutory language. The Service would also like comments on whether this proposed rule is more restrictive than was intended by the statute.

To better focus potential comments regarding the proposed rule, comments should concentrate on factors which can shorten the petitioning process. For example, the consultation process involving those cases where the Service itself must obtain the written consultation is difficult and cumbersome. Suggestions on how to streamline this process would be welcome. A suggestion to eliminate the consultation process is, obviously, in direct contradiction to the statute and could not be implemented.

Another area in which the Service desires to obtain comments involves the evidence required to establish eligibility for the O and P classifications. Suggestions on what evidence would establish extraordinary achievement, extraordinary ability, sustained national or international acclaim would be welcome.

The Service would also be open to proposals for expedited procedures to minimize repeated adjudications involving aliens who had previously qualified as outstanding or extraordinary. For example, should an employer who wishes to employ an O nonimmigrant alien who has been classified as such an alien on two previous occasions be required to establish the beneficiary's sustained international or national acclaim again or can the petitioning process be streamlined in some way. Should there be a time limit, for example, five years, on how long a previous Service determination is valid.

The Service has proposed that petitions for the O and P nonimmigrant classifications be filed no more than 90 days prior to the need of the alien's services. The purpose of this restriction is to ensure orderly processing of petitions for these classifications. The statute provides that no more than 25,000 P-1 and P-3 principal aliens may be admitted in one fiscal year. The Service anticipates that failure to provide such filing restrictions would result in a "run" on this limited supply of nonimmigrant numbers by employers who fear that an adequate supply of visas will not be available in the latter part of the year. The Service proposal should prevent a run caused by an unreasonable fear of an unavailability of numbers (which can itself cause the unavailability). Our experience with other nonimmigrant petitions indicates that this precaution is not likely to be needed with regard to the H-1b petitions for specialty occupations and H-2b petitions for temporary workers. The Service does not anticipate that this restriction will cause any undue hardship on petitioners since historically petitioners rarely, if ever, file more than 90 days in advance of the date the alien's services are needed. It is believed that the primary reason a petitioner might change its filing practices would be to reserve a quota number well in advance, which is exactly what the Service wishes to avoid. Another purpose of the time limitation is to avoid having to readjudicate the petition due to changed circumstances and to avoid having to deal with the substitution of accompanying aliens. Accordingly, the Service desires comments from the public regarding whether a time limitation

is desirable for H petitions as well as the O and P petitions, whether the 90 day time frame is a realistic requirement, and whether some other timeframe (e.g. 180 days or 270 days) would be more advantageous.

The Service's definition of the term event is very broad and is meant to encompass a number of activities related to the alien's principal purpose in coming to the United States. For example, an entertainer who is admitted to the United States to make a movie will also, in all likelihood, be engaged in activities promoting the film. Such activities are considered part of the event and are within the scope of the initial petition. However, the Service recognizes that an alien may engage in a number of activities that are not as clearly related to the principal purpose of the alien's visit as in the example provided. Comments from public in this area which will assist the Service in determining what activities are in the scope of the initial petition will be welcome.

The Service has proposed standards for aliens of extraordinary achievement which are substantially lower than those for aliens of extraordinary ability. The Service would like comments on whether the proposed standard for extraordinary achievement is consistent with statutory intent.

Finally, the Service would like comments regarding the length of time, if any, that essential support personnel and accompanying aliens should be affiliated with the principal alien before they can be accorded nonimmigrant status based on that relationship.

The Service believes that the proposed rule as written strikes a good balance between the needs of the entertainment, sports and business communities of the United States and the protection of the United States labor market.

Technical Amendments

(1) *Adjudication of H, L, O and P petitions only at Service Centers.* This proposed rule modifies the filing procedures in H and L regulations and specifies in the filing procedures in new O and P regulations that petitioners must file H, L, O, and P petitions, even in emergent situations, only with the appropriate Service Center, except where specifically indicated in these regulations. The Service believes that centralization of adjudication of these petitions only in the Service Centers is necessary to assure consistency in decisions, to control the numerical limits required for certain classifications, and to ensure that the statutory requirement for consultation with outside organizations is accomplished where required. Each Service Center will develop its own procedures for handling emergent cases.

(2) *New petition.* This rule proposes to change references to Form I-129H, Petition for Temporary Worker or Trainee and Form I-129L, Petition for Intracompany Transferee to Form I-129, Petition for Nonimmigrant Worker. This new Form I-129 will be used to petition for a number of nonimmigrant classifications besides H, L, O, and P classification. The most significant benefit of this new form is that it combines several requests for action on one form, including request for classification, request to extend the alien's stay in the United States, and request to change an alien's status from one nonimmigrant classification to another. It is anticipated that this new form will be implemented on October 1, 1991 along with the provisions in these regulations.

(3) *Change of employer under the H classification.* When an alien is in the United States and decides to change employers, current H regulations indicate that the new employer must file a petition, but an extension of stay is not required for the alien until the alien's previously authorized stay is about to expire. Operating experience has shown that this procedure is cumbersome and confusing for the public and Service officers. This rule proposes to modify 8 CFR 214.2(h)(2)(i)(D) to require the new employer to file the petition on the new Form I-129 requesting classification and extension of the alien's stay. If the new petition is approved, extension of the alien's stay may be granted for the validity of the petition.

(4) *Petition extension/extension of stay.* Current regulations for the H and L classifications require the filing of an extension of stay application by the beneficiary, accompanied by an employer letter (and in some cases, a Department of Labor determination) stating the current terms and conditions of employment. If the alien's extension of stay application is approved, the petition is automatically extended. This procedure has created problems in extension cases where the alien's eligibility for the classification is questioned. In addition, it creates problems when the alien is required to leave the United States for business or personal reasons before the alien's extension application is approved. Since a request to extend a petition and a request to extend an alien's stay in the United States have been combined on one form (Form I-129), this rule proposes to revise the H and L regulations to require the filing of Form I-129 (without supporting documents) by the petitioner to request extension of the validity of the petition and extension of the alien's stay. If the alien leaves the United States while a decision is pending, extension of the petition only can be approved and notice

of such approval sent to the consulate where the alien will apply for a visa. This proposed rule reflects the same extension procedures for the new O and P classifications.

(5) *Extension periods/total period of stay.* Public Law 101-649 limits the period of stay for aliens in a number of categories and occupations, such as six years for H1-B aliens in a specialty occupation, seven years for L-1 managers and executives, five years for specialized knowledge, 10 years for P-1 individual athletes, and the time required to complete an event or performance for O-1 and O-2 aliens. This proposed rule specifies initial admission periods and extension periods that are consistent with the maximum period of stay allowable and will ease the paperwork burden on the public and the Service.

(6) *Temporary/permanent intent.* This rule proposes to amend the H and L regulations to remove the evidentiary requirements for petitioners and aliens to demonstrate their temporary intent whenever a labor certification has been approved or a preference petition has been filed in the alien's behalf. The Service believes that adherence to the time limits on a temporary stay in the United States is sufficient to demonstrate temporary intent. The proposed rule for the H, L, O, and P classifications provide that the approval of a labor certification or the filing of a preference petition shall not be a basis for denying classification, admission, or status under these classifications.

In accordance with *5 U.S.C. 605*(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, aliens, authority delegation, employment, organization and functions, passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214 -- NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: *8 U.S.C. 1101,* 1103, 1184, 1186a, 1187 and 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraphs (h)(1), (h)(2)(i) (A), (C), (D), (E), and (h)(2)(ii);

b. Revising paragraph (h)(4) heading;

c. Revising paragraph (h)(4)(i) through (h)(4)(iii);

d. Removing paragraphs (h)(4)(iv) and (h)(4)(v);

e. Redesignating paragraphs (h)(4)(vi) and (h)(4)(vii) as (h)(4)(iv) and (h)(4)(v);

f. Revising newly redesignated paragraph (h)(4)(iv);

g. Adding new paragraphs (h)(4)(vi), (h)(6)(vi)(E), and (h)(7)(iv);

h. Revising paragraph (h)(8);

i. Redesignating paragraphs (h)(9)(iii)(A) through (h)(9)(iii)(C) as (h)(9)(iii)(B) through (h)(9)(iii)(D);

j. Adding a new paragraph (h)(9)(iii)(A);

k. Revising newly designated paragraphs (h)(9)(iii)(B) and (h)(9)(iii)(D);

l. Revising paragraphs (h)(10)(ii), (h)(10)(iii), (h)(11)(i), (h)(13) through (h)(16) and (h)(18) to read as follows:

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

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(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 under section 101(a)(15)(H)(i)(a) of the Act as a registered nurse, or under section 101(a)(15)(H)(i)(b) as an alien who is coming to perform services in a specialty occupation or services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or under section 101(a)(l5)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature, or under section 101(a)(25)(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 participant in a special education exchange visitor program. These classifications are commonly called H-1A, 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 whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) An H-1A 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 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 for the facility.

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

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, aliens of extraordinary ability or achievement, accompanying aliens, athletes, and entertainers) 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 an approved labor condition application under section 212(n)(1) of the Act, or

(*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.

(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 unemployed persons capable of performing such service or labor cannot be found in this country. 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 to be performed must be determined. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam, or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(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) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H-1A, H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services or receive training, even in emergent situations, except as provided in this section. Petitions in Guam and the Virgin Islands, and petitions involving special filing situa-

tions as determined by the Service's Headquarters, shall be filed with the local Service Office or a designated Service Office. The petitioner may submit a legible photocopy of a document in support of the visa petition without the original. The original document shall be submitted if requested by the director.

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(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 the Service Center that has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition.

(D) *Change of employers.* If the alien is in the United States and decides to change employers, the new employer must file a petition on Form I-129 requesting classification and 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 shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the new employment until the petition is approved.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition 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 beneficiary's eligibility as specified in the original approved petition. An amended or new H-1A, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination.

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(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service or receive the same training for the same period of time, and in the same location. If they will be applying for visas at more than one consulate, the petitioner shall file a separate petition for each consulate. If visa-exempt beneficiaries will be applying for admission at more than one port of entry, the petitioner shall file a separate petition for each port of entry.

* * * * *

(4) *Petition for alien to perform services in a specialty occupation or services relating to a DOD cooperative research and development project or coproduction project (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, or

(*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.

(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 approval of a labor condition application from the Department of Labor in the occupational specialty in which the alien(s) will be employed.

(*2*) Approval 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)(l) 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 beneficiaries may be filed at different times during the validity of the approved labor condition application using photocopies of the same approval. Each petition must reference all previously approved petitions by file number for that labor condition application.

(*4*) When petitions have been approved for the total number of workers specified in the approved labor condition application, substitution of aliens against previously approved openings shall not be made and 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 in its labor condition application, or that there was a misrepresentation of a material fact in the application, the Service shall not approve new petitions in specialty occupations for that employer, or extend the stay of aliens employed in specialty occupations by that employer for a period of one year from the date of receipt of such notice.

(*6*) If approval of 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 agreed to comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(ii) *Definitions* -- (A) *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the occupation in the United States.

(B) *Recognized 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, including copies or citations of any research material used.

(iii) *Criteria and documentary requirements for H-1B petitions involving a specialty occupation -- (A) Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet 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;

(*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*) An approved labor condition application from the Department of Labor in the specialty occupation, valid for the dates of intended employment,

(*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)(B) of this section, and

(*4*) A statement, signed by an authorized official of the employer, that 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.

(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 required 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 related to the specialty.

(D) *Equivalence to completion of a college degree.* For purposes of paragraph (h)(4)(iii)(B)(*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 (PONSI);

(*3*) An evaluation of education only 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 progressively responsible 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 progressive experience in the specialty. The Service will not evaluate equivalence to a Doctorate degree. If required by a specialty, the alien must hold the Doctorate degree. 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 by at least two recognized authorities in the 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.

(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, 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, 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 submitted by present or former employers or recognized authorities certifying 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.

* * * * *

(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 requirement for approval of 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 in 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)(B) and/or (h)(4)(iii)(C) of this section.

* * * * *

(6) * * *

(vi) * * *

(E) *Liability for transportation costs.* The petitioner shall submit a statement, signed by an authorized official, that 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.

(7) * * *

(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 subject to a numerical limit as follows:

(A) Aliens classified as H1-B nonimmigrants, excluding those involved in DOD research and development projects or coproduction projects, may not exceed 65,000.

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

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

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

(ii) *Procedures.* (A) Each alien (or job opening(s) for aliens in petitions with unnamed beneficiaries) included in a new petition shall be counted for purposes of the numerical limit. Aliens shall not be counted on requests for petition extension or extension of the alien's stay. The spouse and children of principal aliens classified as H-4 nonimmigrants shall not be counted in the numerical limit.

(B) Numbers will be assigned in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Headquarters Adjudications shall allocate numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States. The frequency with which numbers are allocated and the amount allocated shall be determined from workload patterns in these offices.

(D) 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) have not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and the unused number(s) shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected with a notice that numbers available for the particular nonimmigrant classification have been used until the beginning of the next fiscal year.

(9) * * *

(iii) * * *

(A) *H-1A petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i)(a) of the Act shall be valid for a period of up to three years.

(B)(*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 approval 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.

(C) * * *

(D)(*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.

* * * * *

(10) * * *

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial, and of his or her right to appeal the denial of the petition under 8 CFR Part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(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.

(B) The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

* * * * *

(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 30 days before the validity period begins and 30 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. 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 spend time abroad.

(ii) *H-1A limitation on admission.* An H-1A alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H) of the Act may not seek extension, change status, or be readmit-

ted to the United States under the H visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

(iii) *H-1B limitation on admission* -- (A) *Alien in a specialty occupation.* An H-1B alien in a specialty occupation 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 the H or L visa classification, 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 may not be given an extension of stay or change of status, or be readmitted to the United States under section 101(a)(15)(H) of the Act to perform services involving a DOD research and development project or coproduction project. A new petition or change of status under the H or L visa classification 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 three years in the United States under section 101(a)(15) (H) and/or (L) of the Act, or an H-3 alien who has spent 18 months 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 the H or L visa classification unless the alien has resided and been physically present outside the United States for the immediate prior six months.

(v) *Exceptions.* The limitations in paragraphs (h)(13)(ii) through (h)(13)(iv) of this section shall not apply to H-1A, 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 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 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, the alien beneficiary is physically present in the United States, and the petitioner is requesting extension of the beneficiary's stay on the same petition. The dates of extension shall be the same for the petition and the beneficiary's 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.

(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. When the total period of stay in an H classification has been reached, no further extensions may be granted.

(ii) *Extension periods* -- (A) *H-1A extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H-1A petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety, or security interests of the United States. Each request for an extension of stay for the beneficiary of an H-1A petition must be accompanied by a current copy of the Department of Labor's notice of acceptance of the petitioner's attestation on Form ETA 9029.

(B) *H-1B extension of stay* -- (*1*) *Alien in a specialty occupation.* 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. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by an approved labor condition application for the specialty occupation valid for the period of time requested.

(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-1A or H-1B 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-1A 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-lA 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 in the same or a different job or training position and for the same petitioner shall be a reason by itself to deny the alien's extension of stay.

* * * * *

(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.

* * * * *

§ 214.2 [Amended]

3. ln § 214.2, paragraph (h)(2)(iii) is amended by removing the reference to "I-129H" in the first sentence.

4. In § 214.2, paragraph (h)(2)(iv) is amended by removing the term "H-1B and" in the first sentence.

5. In § 2l4.2, paragraph (h)(4)(v)(E) is amended by adding the phrase "in the same state" immediately after the word "valid" in the last sentence of the paragraph.

6. In § 214.2, paragraph (h)(5)(i)(A) is amended by changing the reference to "Form I-l29H" to "Form I-129".

7. In § 214.2, paragraph (h)(6)(iii)(E) is amended by removing the term "on I-129H," after the word "petition", and removing the term "for I-129Hs" after the word "jurisdiction".

8. In § 214.2, paragraph (h)(6)(vi) introductory text is amended by removing the phrase "filed on Form I-129H".

9. In 214.2, paragraph (h)(7) is amended by changing the heading of this paragraph to read " *Petition for alien trainee or participant in a special education exchange visitor program (H-3)* -- ".

10. In § 214.2, paragraph (h)(7)(i) is amended by changing the heading of this paragraph to read "*Alien trainee.*" and changing the word "instruction" in the first sentence to "training".

11. In § 214.2, paragraph (h)(7)(ii) is amended by changing the heading of this paragraph to read "*Evidence required for petition involving alien trainee* -- ".

12. In § 214.2, paragraph (h)(7)(iii) is amended by changing the heading of this paragraph to read "*Restrictions on training program for alien trainee*."

13. In § 214.2, paragraph (h)(9)(i) is amended by removing the term "Form I-171C, Notice of Approval or" in the second sentence of introductory text.

14. In § 214.2, paragraphs (h)(9)(ii)(A), (B), and (C) are amended by changing the reference to "(h)(9)(ii)" to "(h)(9)(iii)".

15. Section 214.2 is amended by;

a. Revising paragraphs (1)(1)(i), (1) (1)(ii)(A), (B), (C), (D), (F), (G), (K), and (L);

b. Revising paragraphs (1)(2)(i) and (1)(3)(iii);

c. Redesignating paragraphs (1)(3)(vi) and (1)(3)(vii) as paragraphs (1)(3)(vii) and (1)(3)(viii);

d. Revising paragraph (1)(3)(v) introductory text;

e. Adding a new paragraph (1)(3)(vi);

f. Revising paragraphs (1)(5)(ii)(C) and (1)(6);

g. Revising paragraph (1)(7)(i) introductory text;

h. Revising paragraph (1)(7)(i)(C), (1)(7)(ii), (1)(8)(ii) and (1)(8)(iii), (1)(9)(i), (1)(10)(i), (1)(12), (1)(14)(i), (1)(15), and (1)(16) to read as follows:

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

* * * * *

(1) * * *

(1) * * *

(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 branch of that same employer or a parent, affiliate, or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant 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 procedures whereby these benefits may be applied for and granted, denied, extended, or revoked. They also set forth procedures for appeal of adverse decisions and admission of intracompany transferees. 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, subsidiaries, and affiliates specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) * * *

(A) *Intracompany transferee* means an alien who, within three years preceding the time of his/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/her services to a branch of the same employer or a parent, subsidiary, or affiliate 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, subsidiary, or affiliate 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 towards 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.

* * * * *

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, subsidiary, or affiliate 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, subsidiary, or affiliate specified in paragraph (l)(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 for the duration of the alien's stay in the United States as an intracompany transferee directly or through a parent, branch, subsidiary, or affiliate, and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * * * *

(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

(*2*) One of two legal entities entirely owned and controlled by the exact same individuals (not companies), each individual directly owning and 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 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 (This provision is limited exclusively to entities which practice as part of an international accounting organization).

* * * * *

(2) * * *

(i) Except as provided in paragraphs (l)(2)(ii) and (l)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only at the Service Center which has jurisdiction over the area where the alien will be employed, even in emergent situations. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office, and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed will result in denial of this petition.

* * * * *

(3) * * *

(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.

* * * * *

(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:

* * * * *

(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 (l)(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.

* * * * *

(5) * * *

(ii) * * *

(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 Service Center with which the blanket petition was filed.

* * * * *

(6) *Copies of supporting documents*. The petitioner may submit a legible photocopy of a document in support of the visa petition, without the original. However, the original document shall be submitted if requested by the Service.

(7) * * *

(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 on receipt of the information. Only the Director of a Service Center may ap-

prove individual and blanket L petitions. The original Form I-797 received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

* * * * *

(C) *Amendments*. The petitioner shall file an amended petition, with fee, at the Service Center 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), and 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 nonimmigrant 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 is otherwise authorized to be employed pursuant to the Act.

(8) * * *

(ii) *Individual petition.* If an individual petition is denied, the petitioner shall be notified of the denial, the reasons for the denial, and the right to appeal the denial within 30 days after the date a completed petition has been filed.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial within 30 days after the date a completed petition has been filed. When the petition is denied in part, the Service Center 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 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) * * *

(i) *General.* The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

* * * * *

(10) * * *

(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.

* * * * *

(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 the H or L visa classification 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 specialized knowledge professional, or seven years in the United States as a manager or executive, unless the alien has met the limitations contained in this paragraph.

(ii) *Exceptions.* The limitations of paragraph (l)(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 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.

* * * * *

(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, the alien beneficiary is physically present in the United States, and the petitioner is requesting extension of the beneficiary's stay on the same petition. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. 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.

* * * * *

(15) *Extension of stay.* 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. 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 the 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 two years 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 approval of a permanent labor certification or filing of a preference petition on L-1 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 L petition, a request to extend an L petition, the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States as a nonimmigrant under the L classification 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.

* * * * *

§ 214.2 [Amended]

16. § 214.2 is amended by changing the reference to "Form I-129L" to "Form I-129" whenever it appears in the following paragraphs:

(l)(2)(ii) text

(l)(3) introductory text

(l)(4)(iv) introductory text

(l)(14)(ii) introductory text

(l)(14)(iii)(A) text

(l)(17)(i) text

17. Section 214.2 is amended by changing the reference to "Form I-171C" to "Form I-797" whenever it appears in the following paragraphs:

(l)(5)(ii)(A) text

(l)(5)(ii)(B) text

(l)(7)(i)(A)(*1*) text

(l)(7)(i)(B)(*1*) text

(l)(9)(iii)(B) text

(l)(13) heading

(l)(13)(i) text

(l)(13)(ii) text

(l)(17)(ii) text

18. In § 214.2, paragraph (l)(17)(ii) is amended by removing the term "(or Form I-797)," in the second sentence.

19. In § 214.2, paragraph (l)(1)(ii)(M) is amended by changing the reference to "district director or Regional Service Center director" to "Service Center director".

20. In § 214.2, paragraph (l)(2)(ii) is amended by changing the reference to "Regional Service Center" to "Service Center".

21. In § 214.2, paragraph (l)(3)(iii) is amended by changing the word "immediately" to the phrase "within the three years".

22. In § 214.2, paragraph (l)(3)(v) is amended in the introductory text by inserting the phrase "to the United States as a manager or executive" after the word "coming".

23. In § 214.2, paragraph (l)(14)(ii)(D) is amended by adding the phrase "when the beneficiary will be employed in a managerial or executive capacity" after the phrase "wages paid to employees" and before the " ; ".

24. In § 214.2, paragraph (l)(17)(iv) is amended by removing the phrase "on Form I-292" in the third sentence, by changing the reference to "Regional Service Center (RSC)" in the fourth sentence to "Service Center", and by changing the reference to "RSC" in the last sentence to "Service Center".

25. In § 214.2, paragraphs (l)(17)(v)(A) and (B) are amended by inserting the phrase "subject to the same limits" after the phrase "length of stay".

26. Section 214.2 is amended by redesignating paragraph (o) as paragraph (s), reserving paragraphs (q) and (r), and adding new paragraphs (o) and (p) to read as follows:

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

* * * * *

(o) *Aliens of extraordinary ability or achievement* -- (1) *Classifications* -- (i) *General.* Under section 101(a)(15)(O) of the Act, a qualified alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services relating to a specific event or performance. 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 extraordinary achievements in the motion picture and television field. Under section 101(a)(15)(O)(ii) of the Act, the alien 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. These classifications are called O-1 and O-2, 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 whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) An O-1 classification includes two categories of aliens and 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; who is coming temporarily to the United States to continue work in the area of extraordinary ability; and whose admission will substantially benefit the United States, or

(*2*) An alien who has a demonstrated record of extraordinary achievement in motion picture and television productions; who is coming temporarily to the United States to continue work in the area of extraordinary achievement; and whose admission will substantially benefit the United States.

(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 alien for a specific event or performance. The O-2 accompanying alien must:

(*1*) Be an integral part of such actual performance or event and possess critical skills and experience with the O-1 alien that are not of a general nature and cannot be performed by others, cr

(*2*) In the case of a motion picture or television production, the alien's critical skills and experience with the O-1 alien must be either based on a pre-existing longstanding working relationship or, if in connection with a specific production only, because significant principal photography 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.* A petitioner seeking to classify an alien as an O-1 or O-2 employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than (alternate 1; 90 days), (alternate 2; 180 days), (alternate 3; 270 days) 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 emergent situations. The petition shall be accompanied by the evidence specified in this section for the classification. A legible photocopy of a document in support of the petition may be submitted without the original. The original document shall be submitted if requested by the director.

(ii) *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 and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service Center having jurisdiction over the area where the work will begin.

(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 with the Service Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

(C) *Change of employer.* If an O-1 alien in the United States seeks to change employers, the new employer must file a petition with the service center having jurisdiction over the new place of employment.

(D) *Amended petition.* The petitioner shall file an amended petition 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.

(E) *Agents as petitioners.* An established United States agent may file a petition in cases involving an alien who is traditionally self-employed or uses agents to arrange short-term employment in his or her behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) 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.

(*2*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specify the wage offered and the other terms and conditions of employment of the beneficiary.

(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 in an event or performance for the same period of time and in the same location. If they will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(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 or achievement, that the alien meets the criteria in paragraph (o) (3) (iv) or (v) of this section, and that the alien's admission will substantially benefit the United States.

(ii) *Definitions* -- (A) *Extraordinary ability* in the sciences, arts, education, business or athletics means superior knowledge, ability, expertise and accomplishments in a particular field, evidenced by sustained national or international acclaim and renown in the field of endeavor.

(B) *Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is recognized as outstanding, leading, and well-known in the motion picture and television field.

(C) *Event or performance* means an activity such as a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year or entertainment event. An entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

(D) *Substantially benefit prospectively the United States* means a significant result from the alien's participation in an event or performance that is an economic, social, educational, cultural, or other benefit to the United States.

(iii) *Standards for establishing a position prospectively substantially benefits the United States.* To establish a position prospectively substantially benefits the United States, it must meet one of the following criteria:

(A) The position or services to be performed involve an event, production or activity which has a distinguished reputation or is a comparable newly organized event, production or activity;

(B) The services to be performed are as a lead, starring or critical role in an activity for an organization or establishment that has a distinguished reputation, or record of employing extraordinary persons;

(C) The services primarily involve a specific scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organizations or establishments; or

(D) The services consist of a specific business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project.

(iv) *Standards for an O-1 alien of extraordinary ability.* An alien of extraordinary ability in the sciences, arts, 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 artistic contributions of major significance in the field or evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;

(*6*) Evidence of the display of alien's work in the field at artistic exhibitions or showcases in more than one country or evidence that the alien has performed as a lead, starring or critical role for organizations and establishments that have a distinguished reputation;

(*7*) Evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field or evidence of commercial successes in the performing arts, as shown by box office receipts or record sales, cassettes, compact disks, or other video sales.

(C) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(v) *Standards for an O-1 alien of extraordinary achievement.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as an artist who has a demonstrated record of achievements in motion picture and television productions as demonstrated by the following:

(A) Has been nominated for or 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*) 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*) 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, or magazines;

(*3*) Has performed as a lead, starring or critical role for organizations and establishments that have a distinguished reputation;

(*4*) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, or standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(*5*) 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 that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*6*) Has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, evidenced by contracts or other reliable evidence.

(4) *Petition for an O-2 accompanying alien.* (i) *General.* An O-2 accompanying alien is an essential support person to an O-1 artist or athlete; however, such alien may not accompany O-1 aliens in the sciences, business, or education. Although the O-2 alien must obtain his or her own classification, it 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 by an employer in conjunction with the services of the O-1 alien.

(ii) *Standards for qualifying as an O-2 accompanying alien*. (A) *Accompanying alien to an O-1 artist or athlete of extraordinary ability*. To qualify as such O-2 accompanying alien, the alien must:

(*1*) Be a highly skilled, essential person determined by the director to be coming to the United States to perform support services which are not of a general nature and cannot be readily performed by a U.S. worker,

(*2*) Perform support services which are essential to the successful performance of the services to be rendered by an O-1 artist or athlete, and

(*3*) Have appropriate qualifications, significant prior experience with the O-1 alien, and critical knowledge of the specific services to be performed.

(B) *Accompanying alien to an O-1 alien of extraordinary achievement.* To qualify as an O-2 accompanying alien to an O-1 alien involved in a motion picture or television production, the alien must:

(*1*) Perform support services which are an integral part of and essential to the successful performance of services by an O-1 alien of extraordinary achievement, and

(*2*) Have skills and experience with such alien which are not of a general nature and which are critical based on either:

(*i*) A pre-existing, longstanding working relationship, or

(*ii*) A specific production that requires principal photography which will take place both inside and outside the United States, in which the continuing participation of the alien is essential to the successful completion of the production.

(iii) *Evidence*. A petition for an O-2 accompanying alien must be accompanied by:

(A) A statement from the O-2 petitioning entity describing the prior and current essentiality, critical skills and experience of the O-2 with the O-1 alien;

(B) Statements from the O-1 alien or from persons having first hand knowledge that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien; and

(C) In the case of a specific motion picture or television production, written statements from production executives attesting to the fact that significant principal photography has taken place outside the United States, and will take place inside the United States, and to the fact that the continuing participation of the alien is essential to the successful completion of the production.

(5) *Consultation* -- (i) *General*. (A) Written evidence of consultation with an appropriate peer group, union, and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

(B) Evidence of consultation shall be a written advisory opinion from the peer group, union, and/or management organization. If the director requests an advisory opinion and no response is received within the time period specified, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To expedite adjudication of an O-1 or O-2 petition, the petitioner should obtain a written advisory opinion from an appropriate peer group, union, and/or management organization and submit it when the petition is filed. When a petition is filed without the required evidence of such consultation, the petitioner shall send a copy of the petition and supporting documents to an appropriate peer group, union, and/or management organization at the same time that the petition is filed with the Service. The petitioner shall explain to the organization that it will be contacted by the Service for an advisory opinion regarding the services to be performed and the alien's qualifications. The name and address of the organization where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that the petition was sent to an appropriate organization, the director shall request, in writing, a written advisory opinion from that group or organization before approving a petition. When the Service must obtain an advisory opinion, considerably longer adjudication time will be required. Consultation is not required if the petition will be denied on another ground. The written opinion should set forth a specific statement of facts on which the conclusion was reached.

(D) Written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory in nature and non-binding on the Service. If a petition is denied because of the opinion provided by a peer group, labor organization, or management organization, it shall be attached to the director's decision.

(ii) *Consultation requirements for an O-1 alien of extraordinary ability.* Written consultation with a peer group in the area of the alien's ability is required in an O-1 petition. The peer group shall be an appropriate association or entity with expertise in that area. The advisory opinion provided by the peer group shall evaluate and/or comment on the alien's ability and achievements in the field of endeavor and whether the alien's admission will substantially benefit the United States. The written opinion shall be signed by an authorized official of the organization.

(iii) *Consultation requirements for 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 production, 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. The advisory opinion from the labor and management organizations shall evaluate the alien's achievements in the motion picture or television field and whether the alien's admission will substantially benefit the United States. Any recommendation from the labor and/or management organization to deny the petition must be attached to the director's decision. In making the decision, the director shall consider the exigencies and scheduling of the production.

(iv) *Consultation requirements for an O-2 accompanying alien.* Written consultation for O-2 accompanying aliens must be made with a labor organization with expertise in the skill area involved. The opinion provided by the labor organization shall evaluate 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 opinion shall address whether the alien has a longstanding working relationship with the O-1 alien, or whether principal photography will be in the United States and abroad and the continuing participation of the alien is essential. In making the decision, the director shall consider the exigencies and scheduling of the production. A single consultation may be submitted in conjunction with multiple accompanying aliens even though more than one petition is filed in their behalf.

(v) *Procedures for advisory opinions.* (A) The Service shall list in its Operations Instructions for O classification those organizations which agree to provide advisory opinions to the Service and/or petitioners. The list shall not be exclusive. The Service and petitioners shall use other sources, such as publications, to identify appropriate peer groups, labor organizations, and management organizations.

(B) The director's request for an advisory opinion shall specify the information needed. The organization to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. After 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15-day period in his discretion.

(6) *General documentary requirements for O classification* -- The evidence submitted with an O petition shall conform to the following:

(i) Affidavits, contracts, awards, reviews, and similar documentation must reflect the nature of the alien's achievement, be executed by the person in charge of the institution, firm, establishment, or organization where the work was performed.

(ii) 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 must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(iii) 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.

(iv) An explanation of the nature of the event or activity, the beginning and ending date for the event or activity, and a copy of any itinerary of the alien's performances for the event.

(7) *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 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 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 as the validity period, not to exceed the limit specified by paragraph (o)(7)(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 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)(7)(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)(7)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The approval period of an O petition shall conform to the limits prescribed as follows:

(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 three 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 artist or athlete to accomplish the event or activity, not to exceed three 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 a nonimmigrant classification authorizing his or her employment.

(8) *Denial of petition* -- (i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter. There is no appeal from a decision to deny an extension of stay to the alien.

(9) *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 shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner 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 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)(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.

(10) *Appeal of a denial or a revocation of a petition* -- (i) *Denial.* A denied petition may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *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.

(12) *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 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.

(13) *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 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 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 one 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 ten days.

(14) *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 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 O 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.

(15) *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.

(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 (o)(15)(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 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, 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.

(16) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on 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 whose 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. 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.

(p) *Athletes and artists or 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 no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this 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 or member of an internationally recognized entertainment group, or under section 101(a)(15)(P)(ii) of the Act, as an alien who is coming to perform as an artist or entertainer under a reciprocal exchange program, or under section 101(a)(15)(P)(iii) of the Act, as an alien who is coming solely for the purpose of performing under a program which is culturally unique. These classifications are called P-1, P-2, and P-3 respectively. The employer or sponsor must file a petition with the Service for review of the services and for determination of the alien's eligibility for a P classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) A *P-1* classification applies to an alien who is coming temporarily to the United States:

(*1*) To perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or

(*2*) To perform at a specific entertainment performance as a member of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and the alien has had a sustained and substantial relationship with that group over a period of at least one 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 seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers between the United States and the foreign states involved.

(C) A *P-3* 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 seeks to perform under a 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 or foreign employer. A P-2 petition for an artist or entertainer in a reciprocal exchange program, or a P-3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or an employer in the United States. The petitioning employer or sponsoring organization shall file a P petition on Form I-129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than (alternate 1; 90 days), (alternate 2; 180 days), (alternate 3; 270 days) 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 emergent situations. The petition shall be accompanied by the evidence specified in this section for the particular classification. A legible photocopy of a document in support of the petition may be submitted without the original. The original document shall be submitted if requested by the Director.

(ii) *Other filing situations* -- (A) *Services in more than one location.* A petition which requires the alien to work in more than one location (i.e., a tour) must include an itinerary with the dates and locations of the competition or performances, and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located.

The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this section. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service office that has jurisdiction over the area where the employment began.

(B) *Services for more than one employer.* If the beneficiary(ies) will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an established agent files the petition.

(C) *Change of employer.* If a P-1, P-2, or P-3 alien in the United States seeks to change employers or sponsors, the new employer must file a petition and a request to extend the alien's stay in the United States. A P-2 or P-3 petition must be accompanied by an explanation of why it would be a hardship for the alien(s) to remain outside the United States for a three month period pursuant to paragraph (p)(9)(iv) of this section, before engaging in a new activity or performance in the United States. If a P-1 petition for an alien to change employers or sponsors is approved, the alien must apply for a new visa at a consular office abroad or, if a visa is not required, apply for admission to enter the United States for the new performance or activity.

(D) *Amended petition.* The petitioner shall file an amended petition 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.

(E) *Agents as petitioners.* An established United States agent may file a petition in cases involving workers who traditionally are self-employed or use agents to arrange short-term employment in their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) 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(ies) 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 establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) 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(ies). The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(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 they are essential support aliens to P-1, P-2, or P-3 beneficiaries. If visa-exempt beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(3) *Definitions:*

(i) *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.

(ii) *Culturally unique* means a style of artistic expression which is peculiar or unique to a society or class of a country.

(iii) *Essential support alien* means a highly skilled, essential person determined by the director to be an integral part of the competition or 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, or P-3 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.

(iv) *Group* means two or more persons established as one entity or unit to provide a service or performance. A group, for the purposes of this section, must have been established for a minimum of one year or more.

(v) *Internationally recognized* means 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 the person is well-known in more than one country.

(vi) *Member of a group* means a person who has been performing as a group member for a minimum of one year or more. For the purposes of this section, the group member is restricted to those persons actually performing the entertainment services.

(vii) *Sponsor* means an established organization in the United States which will not directly employ a P-2 or P-3 alien, but will assume responsibility for the accuracy of the terms and conditions specified in the petition.

(viii) *Team* means two or more persons organized to work together on the same side in a competitive athletic event.

(4) *Petition for an internationally recognized athlete or member of an internationally recognized entertainment group (P-1)* -- (i) *Types of P-1 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 the United States 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 one year or more, and any member of a group must have been performing entertainment services for such group for a minimum of one year or more.

(C) *P-1 classification as an essential support alien.* An alien who is an essential support person as defined in paragraph (p)(3)(ii) of this section may be granted P-1 classification based on a support relationship to an individual athlete, athletic team, or entertainment group.

(ii) *Criteria and documentary requirements for P-1 athletes* -- (A) *General.* P-1 athletes must have a reputation that is internationally recognized, as an individual athlete or as a member of a foreign team that is internationally recognized, and the athlete or team must be coming to the United States to participate in an athletic competition that has a distinguished reputation, and requires participation of an athlete or athletic team that has an international reputation.

(B) *Standards 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 United States based team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her own 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, and

(*2*) Documentation of at least two of the following:

(*i*) Evidence of having participated to a substantial 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 substantial extent in a prior season for a United States college or university in intercollegiate competition,

(*iv*) Written statement from an official of a major United States sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized,

(*v*) 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.* 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. It must be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time. A member of a group must have had a sustained and substantial relationship with the group for at least one year and provide functions integral to the group's actual performance.

(B) *Standards 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, under the name shown in the petition, has been established and performing regularly for a period of at least one year,

(*2*) A statement from the petitioner listing each member of the group and the exact dates which that member has been employed on a regular basis by the group, and

(*3*) Evidence that the group is internationally recognized in the discipline. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in their field or by three of the following different types of documentation:

(*i*) 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, or contracts;

(*ii*) Has achieved international recognition and acclaim for outstanding achievement in their field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(*iii*) Has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation;

(*iv*) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings, or 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*) Has received 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*) Has commanded and now commands a high salary or other substantial remuneration for services comparable to others similarly situated in the field as evidenced by contracts or other reliable evidence.

(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 and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers between the United States and the foreign states involved.

(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.

(C) An alien who is an essential support person as defined in paragraph (p)(3)(ii) 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) *Documentary requirements for petition involving a reciprocal exchange prog ram.* A petition for P-2 classification shall be accompanied by:

(A) A copy of the formal reciprocal exchange agreement between the United States organization or organizations which is sponsoring the aliens, and an organization or organizations in a foreign country which will receive the United States artist or entertainers,

(B) A statement from the sponsoring organization describing the reciprocal exchange of United States 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 United States and foreign artists or entertainers, and

(D) Evidence that the aliens for whom P-2 classification is being sought and the United States artists or entertainers subject to the reciprocal exchange agreement are experienced artists or entertainers with comparable skills, and that the terms and conditions of employment are similar, and that the exchange is individual for individual or group for group.

(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, that are recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing 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 primarily for cultural events(s) to further the understanding or development of that art form, and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges.

(C) A P-3 classification may be accorded to an alien who is an essential support person as defined in paragraph (p)(3)(ii) of this section based on a support relationship to the P-3 artist or entertainer under a culturally unique program.

(ii) *Documentary requirements for petition involving a culturally unique program.* A petition for P-3 classification must be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity and excellence of the alien's or group's skills in performing or presenting the unique or traditional art form, explaining the level of recognition accorded the alien or group in the native country or in another country, and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill and recognition, and

(B) Evidence that most of the performances or presentations will be culturally unique events sponsored by educational, cultural, or governmental agencies.

(7) *Consultation* -- (i) *General.* (A) Written evidence of 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) Evidence of consultation shall be a written advisory opinion from an official of the labor organization. If the director makes a written request for an advisory opinion and no response is received within the time period requested, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To obtain timely adjudication of a P-1, P-2, or P-3 petition, the petitioner should obtain a written advisory opinion from an appropriate labor organization and submit it when the petition is filed. When a petition is filed without the required evidence of such consultation, the petitioner shall send a copy of the petition and supporting documents to an appropriate labor organization at the same time that the petition is filed with the Service. The petitioner shall explain to the labor organization that it will be contacted by the Service for an advisory opinion regarding the services to be performed and the alien's qualifications. The name and address of the labor organization where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that a copy of the petition was sent to an appropriate agency, the director shall request, in writing, a written advisory opinion from the labor organization before approving the petition. When the Service must obtain an advisory opinion, considerably longer adjudication time will be required. Consultation is not required if the petition will be denied on other grounds.

(D) Written evidence of consultation shall be included in the record in every approved P petition. A single consultation may be submitted in conjunction with multiple essential support personnel or a group of principal aliens even

though more than one petition is filed in their behalf. The advisory opinion should set forth a specific statement of facts on which the conclusion was reached. Consultations are advisory in nature and non-binding on the Service. If a petition is denied because of the opinion provided by a labor organization, it shall be attached to the director's decision.

(E) 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. This does not preclude the Service from obtaining a consultation from a closely related labor organization.

(ii) *Consultation requirements for P-1 athletes and entertainment groups.* Written consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in a P-1 petition. The advisory opinion provided by the labor organizations shall evaluate and/or comment on the alien's or group's ability and achievements in the field of endeavor, whether the alien or group is internationally recognized for achievements, and whether the services the alien or group is coming to perform is appropriate for an internationally recognized athlete or entertainment group. The written opinion shall be signed by an authorized official of the organization.

(iii) *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)(ii) of this section.

(iv) *Consultation requirements for P-3 alien in a culturally unique program.* Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in a culturally unique program. The advisory opinion shall evaluate the cultural uniqueness of the alien's skills, state whether the events are mostly cultural in nature or mainly held for commercial entertainment, and whether the event or activity is appropriate for P-3 classification.

(v) *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. The opinion provided by the labor organization shall evaluate the alien's essentiality to and working relationship with the artist or athlete and state whether there are available U.S. workers who can perform the support services.

(vi) *Procedures for advisory opinions.* (A) The Service shall list in its Operations Instructions for P classification those organizations which agree to provide advisory opinions to the Service and/or petitioners. The list shall not be exclusive. The Service and petitioners shall use other sources, such as publications, to identify appropriate labor organizations.

(B) The director's request for an advisory opinion shall specify the information needed. The organization to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. After 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15-day period in his discretion.

(8) *Numerical limits* -- (i) *Limit on affected category.* During each fiscal year, the total number of principal aliens who can be provided P-1 or P-3 nonimmigrant classification is limited to 25,000.

(ii) *Procedures.* (A) Each alien included in a new petition shall be counted for purposes of the numerical limit. Aliens shall not be counted on requests for petition extension/extension of the alien's stay. The spouse and children of principal aliens classified as P-4 nonimmigrants shall not be counted in the numerical limit.

(B) Numbers shall be counted in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Headquarters Adjudications shall allocate numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States. The frequency with which numbers are allocated and the amount allocated shall be determined from workload patterns in these offices.

(D) When an approved petition is not used because the beneficiary(ies) will not apply for admission to the United States, the petitioner shall notify the Service that the number(s) have not been used. The petition shall then be revoked pursuant to paragraph (p)(11)(ii) of this section and the unused numbers shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected with a notice that numbers available for the P-1 and P-3 nonimmigrant classifications have been used until the beginning 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 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 by paragraph (p)(9)(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 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 (p)(9)(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)(9)(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 five 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 six months.

(B) *P-1 petition for 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 one year.

(C) *P-2 and P-3 petitions for artists or entertainers in reciprocal exchange programs and culturally unique programs.* 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 aliens are admitted, not to exceed six months.

(iv) *P-2 and P-3 limitation on admission.* An alien who has been admitted as a P-2 or P-3 nonimmigrant may not be readmitted as a P-2 or P-3 nonimmigrant unless the alien has remained outside the United States for at least three months after the date of his or her most recent admission. The director may waive this requirement in cases of individual tours where application of this requirement would cause undue hardship.

(v) *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 a nonimmigrant classification authorizing his or her employment.

(10) *Denial of petition* -- (i) *Notice of intent to deny*. When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial*. The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter. 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)(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 shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

(ii) *Automatic revocation*. The approval of an unexpired petition is automatically revoked if the petitioner 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 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)(P) of the Act or paragraph (p) of this section;

(*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.

(12) *Appeal of a denial or a revocation of a petition* -- (i) *Denial*. A denied petition may be appealed under Part 103 of this chapter.

(ii) *Revocation*. A petition that has been revoked on notice may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(13) *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.

(14) *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 nct expired.

(15) *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 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 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 may be authorized for a period up to five 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 six months for P-1 athletic teams, entertainment groups, aliens in reciprocal exchange programs, and aliens in culturally unique programs to continue or complete the same event or activity for which they were admitted.

(16) *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 deny-

ing 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.

(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 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.

(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 disputes is not certified under paragraph (p)(17)(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 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 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.

(18) *Use of approval notice, Form I-797*. The Service shall 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 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 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 presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

Dated: April 1, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization.

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