December 22, 2023

Department of Homeland Security
U.S. Citizenship and Immigration Services Office
of Policy and Strategy
5900 Capital Gateway Dr. Camp
Springs, MD 20588-0009

Attn: Charles L. Nimick
Chief, Business and Foreign Workers Division

Submitted via www.regulations.gov DHS
Docket ID No. USCIS-2023-0005

Re: Regulatory Proposal for Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers - *Initial Comment on Proposed Changes to H-1B Registration Process at 8 CFR 214.2(h)(8)(iii)*

Dear Mr. Nimick:

I write to comment on the regulatory proposal captioned above. I write solely in my capacity as a private citizen and not on behalf of any person or entity.

By way of introduction, I have practiced U.S. immigration and nationality law since 1978 and am certified as a specialist in the field by the State Bar of California Board of Legal Specialization. I am admitted to practice law in the states of California, New York and Michigan, and in the District of Columbia. In addition, I have maintained a blog on America's dysfunctional immigration system (www.nationofimmigrators.com). The purpose of the blog and my advocacy activities is "to offer constructive solutions that will enable the U.S. to maintain and enhance its economic prosperity, political freedoms and cultural and religious heritage as a Nation of Immigrants."

Although I have participated in the submission by bar groups of comments relating to the proposed changes to the H-1B regulatory framework in the present notice of proposed rulemaking ("NPRM"), I write separately here to comment on one proposed change relating to the L-1 (intracompany transferee) regulations of United States Citizenship and Immigration Services ("USCIS").

The NPRM proposes to add the following sentence ("the Added Sentence") to 8 CFR §214.2(l)(14)(i):

> [An L-1] petition extension generally may be filed only if the validity of the original petition has not expired.

This amendment, if finalized as proposed, will lead to the disqualification from L-1 nonimmigrant visa eligibility of otherwise qualified intracompany transferees. This is because of

the required look-back period to establish eligibility for this visa classification. See 8 CFR § 214.2(l)(1)(ii)(A) which defines an intracompany transferee to mean:

> [An] alien who, **within three years preceding the time of his or 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 or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. (Emphasis added.)

An L-1 nonimmigrant may be granted extensions of authorized stay in the aggregate of up to five years (under the L-1B category) or seven years under the L-1A category). Presently, L-1 noncitizens may apply and be approved for a change of status to another nonimmigrant category. But under current agency interpretations in no case may a noncitizen concurrently hold two different nonimmigrant statuses. In other words, should the circumstance warrant a temporary suspension of L-1 status, e.g., for the purpose of study, prolonged medical or family leave, or other valid reason, the validity period of an extant and unexpired L-1 approved petition may unavoidably lapse.

If, however, the Added Sentence is allowed to be included in the final regulation, then such persons who lawfully qualified as L-1 intracompany transferees would not be allowed to revert back to L-1 status solely because they lawfully pursued an immigration benefit allowed by Section 248 of the Immigration and Nationality Act and approved by USCIS given that the one-in-the-last-three-years L-1 look-back period would have already lapsed.

The same problem with the Added Sentence would preclude an L-1 nonimmigrant who has applied for adjustment of status, departed the United States and been admitted upon return as a parolee on the basis of advance parole. If the approved L-1 petition has expired during the period of admission as a parolee, the adjustment applicant would not be permitted by reason of the Added Sentence in the NPRM to seek termination of the grant of parole and be admitted in L-1 status under current USCIS policy reflected in the following Cronin Memorandum:

U.S. Department of Justice
Immigration and Naturalization Service

HQADJ 70/ 2.8.6, 2.8.12, 10.18

425 I Street NW
Washington, DC 20536

MAY 25 2000

AD 00-03

AMENDED VERSION

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
OFFICERS IN CHARGE
ASYLUM DIRECTORS
PORT DIRECTORS

FROM: MICHAEL D. CRONIN
ACTING ASSOCIATE COMMISSIONER
OFFICE OF PROGRAMS

SUBJECT: AFM Update: Revision of March 14, 2000 Dual Intent Memorandum.

3. If an H-1 or L-1 nonimmigrant has traveled abroad and was paroled into the United States via advance parole, the alien is accordingly in parole status. Does this interim rule allow him or her to now apply for an extension of nonimmigrant status?

Until the final rule is published, an alien who was an H-1 or L-1 nonimmigrant, but who was paroled pursuant to a grant of advance parole, may apply for an extension of H-1 or L-1 status, if there is a valid and approved petition. If the Service approves the alien's application for an extension of nonimmigrant status, the decision granting such an extension will have the effect of terminating the grant of parole and admitting the alien in the relevant nonimmigrant classification.

Furthermore, USCIS regulations under the L-1 analogue of the Multinational Executive or Manager immigrant visa classification, EB-1(C), have resolved the look-back issue. See 8 CFR § 204.5(j)(3)(i)(B) which provides:

> If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, **in the three years preceding entry as a nonimmigrant**, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity . . . (Emphasis added.)

Indeed, the L-1 regulations themselves mitigate the look-back concern as well. See 8 CFR § 214.2(l)(1)(ii)(A), which provides in relevant part:

> **Periods spent in the United States in lawful status** for a branch of the same employer or a parent, affiliate, or subsidiary 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 toward fulfillment of that requirement.

*** * ***

Accordingly, I urge USCIS to decline to include the Added Sentence which would needlessly and unjustly deprive otherwise law-abiding L-1 petitioners and beneficiaries from continuing to access the intracompany transferee nonimmigrant visa classification in instances where a previously approved L-1 petition had expired.

Respectfully submitted,

Angelo A. Paparelli