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PROCESSING GUIDELINES
FOR THE
NEBRASKA SERVICE CENTER
(NSC)
LINCOLN, NEBRASKA

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APPENDIX A - Nonimmigrant Employment Classification Chart

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APPENDIX C – I-765 Classes worked at Nebraska Service Center

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U.S. Department of Justice
Immigration and Naturalization Service

Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521

Dear Customer,

The Nebraska Service Center strives to be the cutting edge office in the Immigration and Naturalization Service (INS) for the delivery of quality products and services. We understand that accurate, predictable and timely products and service will achieve that goal. We provide these guidelines as a tool for your use to help us serve you to the best of our ability. We believe that if we tell you, our "suppliers", what our needs and processes are, you will be better able to prepare a petition/application/response to a request for evidence/inquiry in a way that will allow us to process it quickly.

We encourage suggestions for improvements concerning these guidelines specifically, and in any other facet of our service as well. They may be submitted to me directly using the procedure provided in the "Quality Trends" section of the guides or through one of our liaison groups: the designated AILA liaison group members, the NAFSA SSRs for the educational organizations, or the International Refugee Committee for the refugee community.

Early this winter, INS will implement a national telephone inquiry system that will provide better access for inquirers than NSC can provide individually. Until then, we encourage you to call us for status checks outside of our business hours and for live assistance within business hours, e.g., 8 AM and 3:45 PM, Central Time. NSC is currently reevaluating its method of managing incoming correspondence and telephone inquiries to assure that the most timely and accurate responses are provided to your questions.

We encourage you to include with your submissions telephone and fax numbers as well as email addresses so we can communicate with you by the most efficient method available. (Generally that will not be by fax or email.) We ask you not to fax inquiries to us. We have neither the process nor the resources to support another "in box".

We face great challenges in meeting your needs, but we are committed to do so. We believe in the provision of immigration and naturalization benefits. Likewise we are pleased and proud to have a role in providing those benefits to America and to you specifically.

Sincerely,

Natalie Vedder
Director
Nebraska Service Center

INTRODUCTION

The purpose of this booklet is to provide information regarding the organization, operation, and procedures at the Nebraska Service Center (NSC). It is hoped the information will assist customers prepare cases and correspondence so that NSC can provide quality service to our public.

A. ORGANIZATION AND SIZE:

The NSC was opened on September 20, 1982, in Lincoln, Nebraska, as one of four Immigration & Naturalization Service (INS) Centers. There were fourteen people on opening day: Now there are about seven hundred at NSC. Just less than half of the staff is employed by INS. The other staff members work for one of two companies who hold contracts to provide services to INS. The Center staff works in one of five divisions: Adjudications, Records, Operations, ADP and Administration.

Adjudications Division

The Adjudications division is responsible for the adjudication of all cases completed at the Center and for the notice generation resulting from those adjudications. Likewise, this division provides telephonic, written and personal service to those requesting information of NSC about cases processed locally.

Records Division

The Records staff provides oversight to the contract functions which include incoming and outgoing mail; file storage and maintenance; and data entry and fee receipting. Any of these functions which are not within the scope of the contract, are performed by INS employees. It is with Records INS employees that all Freedom of Information/Privacy Act requests are processed. Likewise it is Records staff that monitor the contract performance to assure compliance with the contract standards and that endeavor to assist in enhancing contract performance.

The contract staff provide the following services: Incoming filings are screened, sorted, date stamped with the date they are received in the Center, and put in record of proceeding order in the Mailroom operations. Data Entry then receipts remittances and creates the electronic records for all filings. File Maintenance performs a variety of functions including creating files, consolidating documents into those files, and searching databases for electronic information about applicants/petitioners and their files. Likewise they request files from others offices and forward files to other offices. The scheduling of applicants for fingerprinting and the tracking of those requests, the processing and forwarding of completed fingerprint cards to the FBI, and the dissemination of the results of those FBI checks to local INS offices are also performed by the contract staff. They also manage the storage and retirement of crewman manifests from all ports of entry in the US. This unit also creates electronic records concerning applicants for adjustment of status filed in other INS offices which result in the generation of permanent resident cards.

Operations Division

The Operations Division is involved in document and fraud analysis and coordinates requests for field review as it relates to potential fraud. The Operations Division is the Center repository for all information and intelligence regarding fraud and fraud conspiracies in petitions and applications.

Automated Data Processing Division

The role of ADP is to ensure local area networks perform effectively and to provide support to national systems, local systems/software, and all relating hardware. They also are responsible for all facets of the NSC telecommunications usage. ADP maintains local and national systems' security and provides systems analysis/design/programming. They also have responsibility for the production of Permanent Resident Cards and Employment Authorization Documents. There are both INS personnel and contract personnel in this unit which supports the center 24 hours a day.

Administration Division

The role of the Administration Division is to provide support and services to all other divisions in NSC. This is done through personnel, security, procurement, and budget services, facility management, and supply provisions.

II. FORMS PROCESSING LOCATIONS

A. APPLICATIONS/PETITIONS RECEIVED IN AND PROCESSED AT NEBRASKA SERVICE CENTER

Traditional Jurisdiction

The following applications and petitions are filed by mail at NSC when the applicant/petitioner resides in one of the states enumerated in D. of this section of the Guide.

- I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.
- I-129F Petition to Classify Status of Alien Fiance(e) for Issuance of Nonimmigrant Visa.
- I-129 Petition to Classify Nonimmigrant Alien on Basis of Profession/Occupation or Trainee.
- I-129S Nonimmigrant Petition based on Blanket L Petition
- I-130 Petition for Alien Relative
- I-131 Application for Travel Document: Refugee Travel Document, Reentry Permit and Advanced Parole (when the relating Application for Adjustment of Status is pending at NSC).
- I-140 Petition to Classify Preference Status of Alien on Basis of Profession or Occupation.
- I-360 Petition for Amerasian, Widow(er), or Special Immigrant. **NOTE: I-360's for Amerasians and Special Immigrant Juveniles are filed at the Local Offices. Battered spouse petitions are filed only at the Vermont Service Center.**
- I-485 Application for Adjustment of Status based upon a previously approved employment petition or upon asylee or refugee status in the US.
- I-539 Application to Change Status or Extend Time of Temporary Stay.
- I-589 Application for Asylum and for Withholding of Deportation Fee **NOTE: Only applications from the San Francisco and Chicago asylum office jurisdictions districts are processed at NSC.**
- I-690 Application for Waiver of Legalization Grounds of Excludability.
- I-694 Notice of Appeal of Decision Under Section 210 or 245A of the INA.
- I-695 Application for Replacement of Form I-688, Temporary Resident Card or I-688A. Employment Authorization Card.

- I-698 Application for permanent residence filed by a temporary resident under Section 245A of the INA.
- I-730 Refugee/Asylee Relative Petition **Note: These may only be filed at NSC.**
- I-751 Petition to Remove Conditional Basis of Alien's Permanent Resident Status.
- I-765 Application for Employment Authorization. **NOTE: See the processing tips section for the types currently being accepted at the NSC.**
- I-817 Initial Application for Voluntary Departure under the Family Unity Program
- I-821 Application for Temporary Protected Status. Only when applicants are citizens, residents or born in Nicaragua or Honduras.
- I-824 Application for Action on an Approved Application/Petition.
- N-400 Application to File Petition for Naturalization.
- Appeals Relating to cases denied at the NSC Only
and
Motions

National Jurisdiction

The following applications/petitions must be filed by mail at NSC regardless of where in the US the applicant/petitioner lives.

- I-129 Petition to Classify Nonimmigrant Alien on Basis of Profession/Occupation or Trainee, when applying for a male major league baseball, hockey or indoor soccer player, a female major league basketball player, or a Canadian custom harvester.
- I-131 Application for Travel Document, when applying for a refugee travel document or a reentry permit.
- I-485 Application to Adjust Status to Permanent Resident, when the applicant's current status is refugee or asylee
- I-730 Refugee/Asylee Relative Petition.

B. CASES ACCEPTED AT LOCAL OFFICE WHICH MAY BE PROCESSED AT NSC

The following applications must be submitted to a Local Office but may be forwarded by that office to the NSC for processing. Since all applications and petitions adjudicated at the NSC

are entered into the electronic receipting systems for tracking, any application or petition received at the NSC which has been accepted elsewhere by an INS office will be assigned a LIN number. Petitioners and applicants will then receive a notice from the Center which will indicate their LIN number.

- I-90 Application to Replace Alien Registration Card
- I-212 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal
- I-612 Application for Waiver of the Foreign Resident Requirement of Section 212(e) of the Immigration and Nationality Act, as amended

C. CASES ACCEPTED AND PROCESSED AT OTHER INS OFFICES ONLY

All forms processed by the INS that are not specifically listed in A or B.

D. GEOGRAPHIC LOCATIONS FOR NSC PROCESSING

NSC processes most forms filed by applicants/petitioners who reside in the following states:

Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming.

III. GENERAL PROCESSING INFORMATION

A. FORMS

Forms are available by calling the National Forms Request Line at 800-870-3676. They are also available through some local immigration offices, through the Government Printing Office or their bookstores. The NSC does not dispense forms.

B. PROCESSING TIMES

Processing time varies by case type. The projected processing time is included on each receipt notice (Form I-797). A monthly processing time report is produced and disseminated through various customer groups and media. The most current processing times are those which serve as responses to inquiries about specific cases through INSDirect, the software system used to provide automated telephonic case status.

C. CABLE REQUESTS

Cables regarding approved petitions will only be sent if one has been requested and if the benefit is available within 30 days. There are times when NSC will fax a copy of an approved petition to a consular office, e.g. generally when the benefit is available in less than 14 days.

There is no fee for a cable when requested before adjudication of the application/petition. There is no charge for a request for a cable made at the time of filing the petition. A cable will only be sent for consular notification subsequent to the approval of the application/petition upon the approval of a properly filed I-824.

EXCEPTION:

Cables will not be sent for approved I-129 petitions requesting change of status without the filing of a Form I-824 to notify a consulate office (by cable). It is recommended that the I-824 and I-129 are filed simultaneously.

D. CASE RECEIPT NUMBERS

The numbering system on receipts has significance. The system varies somewhat depending on the software system used to process the case. Those systems are enumerated below for you use.

A case processed in CLAIMS3 – LAN version is structured as follows:

LIN 99 001 50001

LIN represents the office location where initially received into the electronic system. In the example, LIN indicates Lincoln, Nebraska or NSC. Cases that are received at another Service Center but processed at the NSC will generally carry the originating office number.

EAC = St. Albans, Vermont or Vermont Service Center

SRC = Dallas, Texas or Texas Service Center

WAC = Laguna Niguel, California or California Service Center

99 represents the fiscal year in which the case was received.

001 represents the computer workday in the fiscal year on which the fee was taken. Generally 001 is October 1st, the first working day of the fiscal year. 265 generally is a computer work day in September. This is NOT truly a julian date because no "computer work day" exists if the center does not receipt cases on any particular date, e.g. most Saturday's, all Sunday's and holidays.

50001 represents the particular case number. In this case, it is the first case received in CLAIMS3 LAN on that particular workday.

A case processed in CLAIMS3 Mainframe has a similar structure:

LIN 99 001 00001

All is the same as the CLAIMS3 LAN version except the particular case number. The LAN version commences with 5: The mainframe version commences with 0. * The significance of this difference is that electronic case status information is NOT available to the public for the mainframe cases. Only I-751s and I-829s are/have been receipted in this version.

A case processed in CLAIMS4 (currently only N-400's) has a different structure. It has two significant numbers. The first (application identification number/APP ID) is a series letters, numbers and a symbol. LIN*000000006 is an example of an APP ID. This is strictly sequential and does not change at the fiscal year. This is the number to refer to when seeking information regarding this case.

The other relevant number is the number printed on the reverse of the financial statement (check, money order, etc) used for paying the fee. It is the payment identification number (PAY ID). Its structure is: LIN\$000000004. This too is purely sequential, and is not the same number as the "APP ID". It may be followed by some other numbers such as:

LIN\$000000004 (1)

LIN\$000000004 (2).

The significance of this is sequencing is that more than one financial instrument was used to pay the fee for one application. For instance, if an N-400 applicant submitted two checks to pay for the N-400 fee and the fingerprint fee, the sequence might be as listed above, each check/money order bearing one of the sequenced numbers. The case would only have one "APP ID" however: (for example LIN*000000006).

The "PAY ID" number may not be used for case status in the automated information system, however the "APP ID" can be used. The "PAY ID" can be used for seeking status information when talking with an INS representative.

E. GENERAL INQUIRY REQUESTS

The 'General Status Inquiry' form is available for customers to use to submit requests for information about their cases, to notify NSC of a change of address on a pending case, to quickly seek an error correction, etc. If this form is unavailable to the customer, it may be obtained by writing NSC and requesting it or by contacting the published customer contact phone number. The form may be duplicated; however, it is requested that it be **reproduced on light green paper** so that it is easily identified and routed during mail processing. NSC will reproduce this form with the form requesting the status of I-551 or I-765 processing (described in Section F. below) on the reverse. These forms are meant to be used independently or together when appropriate. Therefore, do not reproduce the card status form if it is not necessary for NSC to respond to your needs.

Please do not use the form when filing applications or petitions.

To enable NSC to most efficiently provide information services, all of the relating information should be completed. Please complete the address block legibly and within the box so that the information may be read through a window envelope by the US Post Office. Many times NSC staff will be able to include responses on the form itself, thus the ability to read the inquirer's address is critical to the Post Office.

The form may be used for multiple reasons on the same request. Please check all appropriate boxes and briefly describe any situation not specifically enumerated in the list of options after checking the "Other" box.

Although the inquirer's fax and email addresses are requested, it is neither required information nor is it expected that NSC will respond using one of those media. However, if it is most advantageous to the agency and the information is provided, it will be used to do so.

F. REQUESTS FOR PROCESSING STATUS OF I-551 AND I-765

The 'Inquiry About Status of I-551' form may be used by customers who believe their I-551 or I-765 is being/was processed at NSC and they are requesting status of the card processing. NSC would be the processing office if an I-90, I-765, or I-485 was adjudicated at the NSC. Likewise, it would be the office if an applicant adjusted status in one of the local INS offices that is supported by NSC as enumerated in Section II. D. of this guide.

All of the pertinent information must be completed to enable NSC to deliver the most effective information service relating to card production. Please assure that the appropriate name and mailing address are contained in the box at the bottom of the form and that they are provided legibly. NSC staff will respond directly on the submitted form and will mail it back in a window envelope with the box exposed for the Post Office use.

As with the general purpose status inquiry form listed above, if this form is unavailable to the customer, it may be obtained by writing NSC and requesting it or by contacting the published customer contact phone number. Feel free to duplicate this form, but when doing so please use **light green paper** so that it is easily identified and routed in the mail processing function. NSC will reproduce this form on the reverse of the general purpose inquiry form described in section E above. It may be utilized alone when the status of card production is the only information sought. However, completing both forms when seeking card production status may assist NSC in problem cases and so it is recommended.

G. EXPEDITE REQUESTS

Requests for expeditious handling will be considered under the following circumstances:

1. When the benefit is needed in a time frame that is less than our normal processing times, and
2. When that short time frame was not caused by less than diligent application procedures on the part of the applicant or petitioner, or
3. When there is a great humanitarian need, or
4. When there is great financial consequences at stake, or
5. When Service error has caused the need for expeditious processing.

Requests that do not meet these criteria will not be granted and delayed processing will inevitably result.

To request an expedite, state "PLEASE EXPEDITE " in the heading of the letter which requests expeditious processing and addresses the criteria listed above. Also so note on the envelope. This request can be made at the time of filing or by letter after the filing of an application or petition.

If submitted, prepaid return express delivery envelopes (either US Post Office or private delivery service) will be used by NSC to deliver the information/document requested (except permanent resident cards and employment authorization documents). It is recommended that one be submitted with the expedite request.

H. CUSTOMER FEEDBACK ON QUALITY TRENDS/PROBLEM RESOLUTION

We are interested in customer feedback regarding our quality. Any such feedback should be addressed to the Director and mailed to P.O. Box 82521. Note in the heading of the letter and on the envelope: "FOR THE PERSONAL ATTENTION OF NATALIE VEDDER". When generalizations are made about processing trends, references to specific case numbers provide the best avenue of review for the Center.

If customers have endeavored to get problems resolve through the normal inquiry process and/or through one of the appropriate liaison groups without results, the "personal attention" process explained above may be used. This is not an expeditious way of addressing issues and therefore should not be used when endeavoring to solve a problem quickly.

I. FOIA/PA (Freedom of Information Act/Privacy Act Information)

DEFINITIONS:

Access

Includes any form of disclosure. A copy always satisfies FOIA/PA access requirements.

INS Agency Record

Any tangible recording of information and/or any item, collection, or grouping of information that is maintained by, and under the control of, the INS. Notes made by employees are not generally agency records because they are not subject to the rules and controls of the agency for records maintenance and disposition.

Business Information

Commercial or financial information provided to INS by a person which may be protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause competitive harm to the submitter or another person.

Business Information Submitter

Any person or entity who provides business information, directly or indirectly, to INS. The term includes, but is not limited to, corporations, state governments, and foreign governments. It does not include other federal agencies.

First Party Requester

A request from the subject or his/her representative asking for access to his/her own record. A notarized signature, or a sworn declaration under perjury from the record subject, is required for access to a PA record when the request is from a person other than the subject, unless one of the conditions of disclosure authorizes disclosure.

Freedom of Information Act Request

A request in writing by any person (regardless of citizenship status) for access to any record or information maintained by INS, except for the following, which are considered non-FOIA requests:

- a) White House and Congressional requests
- b) Overseas offices
- c) News media requests under 28 CFR 50.2
- d) Requests from another Federal Government agency
- e) Requests from state, local or foreign governmental agencies

- f) Routine use disclosures
- g) Requests for return of original documents
- h) Requests from other agencies for review of INS files
- i) Requests for immigrant status verification
- j) Visa availability

Individual (Privacy Act)

A U.S. citizen (USC) or alien lawfully admitted for permanent residence (LPR). Corporations and organizations are not individuals.

Privacy Act Request

A request in writing submitted from any living citizen of the United States or legal permanent resident for access to his/her own records which are contained in a PA system of records. The records must be under the control of the INS and be retrieved by the name of the requester or other personal identifier. Requests are from:

- a) The subject for access to his or her own records.
- b) A third party with the written, privacy waiver of the record subject.
- c) The parent of a minor child or the legal guardian of a person declared incompetent by a court of competent jurisdiction.

Routine Use

An established use and authority for disclosure of records from a Privacy Act system of records, other than an interagency disclosure, for a purpose which is compatible with the purpose for which they were collected, and which would otherwise be prohibited by the PA. Such disclosures do not require the prior written consent of the record subject, but must be published in the Federal Register prior to their implementation.

System of Records

A group of any records on United States citizens or aliens lawfully admitted for permanent residence under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual, and which is therefore subject to the Privacy Act.

Third Party Request

A request from any person for access to another individual's records without the individual's consent. The identity of a third party requester and his/her relationship to the subject does not increase (or decrease) his/her rights of access to the records.

REQUIREMENTS FOR MAKING FOIA/PA REQUESTS TO THE NSC INS FOIA/PA UNIT

Request must be submitted in writing. The INS Form G-639, Freedom of Information/Privacy Act Request is preferred and recommended for rapid identification and to ensure expeditious handling.

Every attorney representing a client who is requesting information through the FOIA/PA Unit at the NSC **MUST** submit a signed (original signature) and dated Notice of Entry of Appearance as Attorney or Representative Form G-28.

Requests must describe the requested information with specificity including complete name of the subject and any other names used or any variant spelling, alien registration number(s) if applicable, date of birth and country of birth, subject matter, and location of the record if known. This permits INS personnel to identify and locate the records requested.

POINTS TO CONSIDER:

1. When requesting expeditious delivery of the information, requesters must **not** use the INS' Federal Express account number, rather they may provide a prepaid envelope/mailer for use by NSC.
2. Requesters cannot require the INS to "create" records. The request must be for access to records that already exist.
3. A Form G-28 entitles authorized representatives to review the current record of proceeding pending before the NSC. Even though it does not fall within the purview of the FOIA/PA, it will be handled as an operational matter by the NSC FOIA/PA Unit.
4. Verification of identity is not required for access to records available under the FOIA. Individuals requesting records protected under the Privacy Act must provide a privacy waiver from the record subject, unless the FOIA requires their release. If a Form G-28 is used for verification purposes, the following situations may apply:
 - a) Nonresident Alien - Consent to access for nonexempt material is not required on Form G-28.
 - b) Lawful Permanent Resident or U.S. Citizen (LPR or USC) - Consent statement at the bottom of Form G-28 must be completed by the LPR/USC and accompanied by a notarized signature or sworn declaration under perjury. Signature must be **original** only.
 - c) Legalization Files - Consent is required by the person to whom the record pertains for any and all access requests.
5. A records retention and disposal schedule is published in the General Records Schedule by the National Archives and Records Administration. If the requested information is in the files at the time of the request, then that information may be released if it is not exempt. If, however, the information requested has been destroyed pursuant to the General Records Schedule, then that information is lost.
6. Two requirements for access requests exist:

- 1) Reasonably describe the records sought
 - 2) Follow agencies published procedural regulations
7. The FOIA/PA Unit is required to inform the requester of decision to grant or deny access to records within 20 working days. (This does not necessarily require the release of the records within 20 days).

Extension of time may be required in three situations:

- 1) Need to search for and collect records from separate offices.
- 2) Need to examine a voluminous amount of records required by request.
- 3) Need to consult with another agency or agency component.

Sometimes the NSC FOIA/PA Unit cannot meet the time limits due to a variety of reasons, including high volume of requests received and limited resources. The Center FOIA/PA Unit relies on the language of 5 U.S.C. 552(a)(6)(c) and on the leading case Open America v. Watergate Special Prosecution Force, 547 F. 2d 605, 614-16 (D.C. Cir 1976) to process the requests using the first-in, first-out concept. Courts have agreed to allow agencies to handle requests on a first-in, first-out basis. Requests can be processed out of turn if there is jeopardy to life or personal safety or a threatened loss of substantial due process rights.

8. If there is a request for expedited treatment (that the request be taken out-of-turn) and the request fails to meet the criteria, it shall be processed on the appropriate track (first-in, first-out process).
9. Regarding FOIA requests, any reasonably portion of a record that can be segregated must be released after appropriate application of the nine exemptions.
10. Fees are applicable in the following three categories:
 - a) Representatives from news media, educational or noncommercial - purpose is scholarly or scientific research. Billed only for reasonable copying charges.
 - b) Commercial use (profit making activities) are billed for copying, search and review.
 - c) All others - personal use, public interest groups, nonprofit organizations are billed for document copying and search. Review costs may not be charged.

Small requests are free to requesters from groups a and c. Also, if collecting the fees would cost more than the fees themselves, the INS will not normally collect the fees.

11. Whenever a FOIA request is denied, the NSC FOIA/PA Unit will inform the requester of the reasons for the denial and the requester's right to appeal the denial to the head of the agency. There is no set time limit for filing an appeal for a FOIA denial. The INS is required to make a decision on an appeal within 20 working days. This period can be extended 10 more days. If the time period has elapsed, the requester may consider the appeal to be denied and may proceed with judicial appeal; however, courts aren't sympathetic to appeals based solely on the agency's failure to comply within the time limits. Judicial appeals are filed in U.S. District Court in the district where the requester lives, where the documents are located or in the District of Columbia.
12. A Privacy Act lawsuit is properly filed against an "agency" only (not an individual, government official or an employee.)
13. The fastest way to make a Privacy Act request is to identify the specific system of records.
14. Do not attempt to make telephonic requests for information.
15. Facsimiles of initial requests are not properly received because an original signature is a requirement.
16. If a FOIA/PA request is thought to be within the jurisdiction of the receiver, but found later to be in the custody of another INS office, the FOIA/PA office will track and transfer the request to the appropriate office. If the request does not constitute a FOIA request, these steps will not be followed.
17. In the case of an amnesty/legalization file (which contain requests for benefits under Sections 210 or 245A of the Act), confidentiality does not cease to exist after death because structurally, congress mandated confidentiality to follow the life of the file, and not the life of the applicant. Generally the life of a file is 75 years after the last action taken on the file.

FORMS

G-28, Notice of Entry of Appearance as Attorney or Representative: Used by attorneys or representatives to review the current record of proceeding pending before the INS.

G-639, Freedom of Information Act/Privacy Act Request: The G-639 was created by the INS FOIA/PA Office for the purpose of providing the public with a convenient means of requesting access to records from the INS under the Freedom of Information Act and the Privacy Act. In accordance with regulation 28 CFR 16.3 and 8 CFR 103.10(a)(2), a request must be made in writing; however, no specific format is required other than the requester must be specific in describing the record requested.

IV. GENERAL WORK FLOW:

The first step is the receipt of mail. Mail is generally opened within twenty-four hours of receipt. It is stamped with the time and date of received in the Center, not the time and date it is opened. Mail with fees enclosed is routed immediately to mail assembly. Cases lacking proper signature or correct fee are flagged for system reject. Properly filed cases and cases flagged for system reject are then forwarded to the Data Entry unit. Fee receipts are printed and mailed after the electronic record is created by Data Entry. This means the date on the fee receipt may be different from the date the mail was received for priority date purposes.

Mail without a fee enclosed is considered correspondence and is sorted by type, if the appropriate destination can be quickly determined. If Mail Room personnel are unsure of the proper recipient, the material is sent to the Customer Contact Services unit where it is read and either responded to or routed to the appropriate division for action.

Once the fee has been properly receipted and the electronic records created, cases are routed to the Work Distribution unit to await a call for work by the Adjudications Division.

Once the officer approves a case, the appropriate data (including cable requests) are noted on a processing sheet and forwarded with the application/petition to the clerical section. The system is updated, the completed application or petition is sent to the fileroom, consulate or other appropriate office, and original documents are returned as required.

VARIATIONS

Requests for Evidence (RFE's): When an application or petition is not approvable, a request for evidence is generated. The applicant/petitioner has 12 weeks to respond. During that time, he/she may:

1. Submit all of the requested evidence,
2. Submit some or none of the requested evidence and ask for a decision based upon the record, or
3. Withdraw the application or petition.

If a correction is needed to the petition or application, a photocopy of the application/petition will be included with the request for evidence. The correction can be made on the photocopy and then will be included in the record of proceeding.

The governing regulation precludes any extension of the twelve week response time. No interim benefits will be granted while a case is held pending receipt of requested evidence. If no response is received within the time limit, the case will be considered abandoned and denied and the denial may not be appealed. **IT IS EXTREMELY IMPORTANT THAT THE LETTER REQUESTING EVIDENCE BE RETURNED WITH THE EVIDENCE AND THAT THE SPECIAL MAILING**

ENVELOPE PROVIDED BE USED. FAILURE TO DO SO WILL DELAY PROCESSING OF THE CASE AND MAY RESULT IN A DENIAL DUE TO ABANDONMENT. Evidence submitted without the letter and/or proper return mailing envelope will be difficult to match up with the pending case and may be treated as general correspondence by mistake.

A motion to reopen a case denied due to abandonment may be filed if one of the following is demonstrated:

1. The requested evidence was not material to the issue of eligibility,
2. The required evidence was submitted with the application or petition or the request for evidence was complied with during the time allowed, or
3. The request for evidence was sent to an incorrect address or the INS was notified of a change of address before the request was sent.

As with appeals, any motion to reopen or reconsider must be filed within 30 days of the date of the denial.

DENIALS. If the officer feels a case should be denied, the denial is written and forwarded to the Clerical Unit for printing. The printed denial is then given to the supervisor for review and then returned to the Clerical Unit for updating and mailing. In the case of a denial, all material is usually retained in the file.

Denials (other than Legalization/SAW cases) are held in the Records Division of the Center until the time limit for the filing of an appeal has been reached. Material clearly marked as an appeal will be directly routed to the Records Division to be connected to the appropriate file and then forwarded to the Adjudications Division for processing. Legalization/SAW denials are held in the Legalization records area. Clearly marking the material as an appeal will expedite the time it takes to get the material to the Adjudications Division.

If any evidence and/or argument submitted with an appeal overcomes the grounds of the denial, the case will be treated as a motion to reopen and the application/petition will be approved. This is done without forwarding the case to the Administrative Appeals Unit, the Legalization Appeals Unit or the Board of Immigration Appeals.

QUALITY REVIEW: Quality review procedures are in place for all adjudications. The work is reviewed to ensure that the decision made by the officer is correct and complete, that proper procedures have been followed, and that quality standards have been met.

V. GENERAL TIPS ON PETITION AND APPLICATION ASSEMBLY AND MAILING ADDRESSES

GENERAL INFORMATION

The majority of mail arrives on Monday (40%) and Friday (20%). The other three days of the week share an equal amount of mail. Because of the volume of mail arriving on the two busiest days, sending a case via express mail to arrive on either of those days does not assure it faster processing. Generally, mail received is assembled within six work hours of arrival at the Center regardless of how it was sent, except about half of the mail received Monday will not be assembled until Tuesday morning. The lower volumes of mail arriving on Tuesdays means that the mail is usually opened by Tuesday evening. From our Mail Unit the case proceeds to the Data Entry Unit.

Our Data Entry unit collects the appropriate fee or when necessary, rejects the case if the fee is incorrect or the form not signed. If a case is not clearly acceptable, it is immediately passed to our Case Resolution Unit for review. If they are unable to overcome the obstacle to processing, the case is returned to the applicant/petitioner for correction. Receipt or rejection notices are generated during Data Entry and mailed no later than the next morning.

The Center makes every effort to process each application/petition without returning it for further information. The reason is not completely selfless. It takes more effort to return a case that is not properly prepared than to process a case that is properly prepared when received.

The more orderly, better prepared applications/petitions take less time to process. The less time spent on each case permits faster processing of all cases. The more support you provide to us the more we will be able to provide the service you deserve. These better prepared cases enhance service.

GENERAL PROCESSING TIPS:

1. **PLEASE DO NOT SEND CASH, IT WILL ONLY DELAY PROCESSING.** The Service Center cannot deposit cash. When cash is received, it must be converted to a money order. Not only does it cost money to purchase the money order, it takes time. It takes roughly an additional half to one hour to convert cash to a money order. On a case-by-case basis, this time may seem small. However, the total time devoted to processing the average acceptable case is about 15 minutes. The rest of the time the case is waiting for the next processing step. The time it takes to convert cash adds significantly to total processing time.
2. Be sure checks are signed and correctly dated. Many checks are received that are not signed or are dated incorrectly. The date on the check should be no more than 6 months old. Post-dated checks are acceptable as long as the date on the check is **NO MORE THAN 5 days** away from the date the check is received.
3. **Place the check on top of the application, securely fastened in the upper left corner.** If more than one application is being filed for the same applicant (such as when an applicant concurrently files an I-485, 765, 131, 612 and 824) and multiple checks are submitted, each check should be securely fastened to the upper left corner of its respective application/petition. If only one check is submitted for all filings for the same alien it should be securely fastened to the upper left corner of the dominant

application/petition. It is recommended that a separate check for each is submitted for each application. This will avoid the necessity of returning ALL applications should just one be found to be unacceptable.

If more than one petition is being submitted by the same petitioner for multiple beneficiaries, such as when a citizen applies for four siblings, and a check is submitted for each petition, please securely fasten all checks together on the top left corner of the top petition.

4. The less time it takes to enter each case into the CLAIMS processing program the faster all cases are processed. The easier it is to read the information on the form the faster the data can be entered. If data cannot be typed, use a dark colored ink pen to print clearly. Use of lead pencils is discouraged. They are generally too light, smear, and are hard to read.

5. If pictures are required for an application, please place them in a separate envelope and attach the envelope to the relating application. Stapling photographs directly to the form often results in the photo being unacceptable, causing delay while new photos are requested. Please send the correct number of pictures. Pictures must also be in color.

6. If small items or documents are being submitted, place them in an envelope. A list of the contents and the petitioner's/applicant's name and date of birth should be written on the outside of the envelope.

7. The unavailability of revised forms affects everyone. If you use photocopies of a form, please place the pages of the form in proper order. Processing of a form is delayed while personnel hunt for the pages containing the data needed to complete a case.

8. The use of strapping tape around all four sides to secure an envelope may add some protection against destruction while it is in the hands of the Post Office or other delivery service. It does, however, make it difficult to open the package when it arrives. Again, the longer it takes to process any single case the longer it takes to move on to the next case.

9. In general, the following assembly order should be used to file applications or petitions at the Service Center:

Fee payment
Form G-28, if applicable
Application or petition with photos attached (if applicable)
G-325A, if applicable
Other evidence
Supporting documentation

The form types that should be assembled in the above manner include:

I-90	I-102
I-129F	I-130
I-131	I-140
I-212	I-290

I-360	I-526
I-539	I-589
I-612	I-690
I-694	I-695
I-698	I-724
I-730	I-751
I-765	I-817
I-821	I-824
I-864	Motion

The following form types have other requirements that warrant a more specialized assembly order:

I-129

Fee payment
Form G-28, if applicable
Form I-129

Form I-129 Supplement, if applicable

Form I-539
Other evidence
Supporting documentation

I-485

Fee payment
Form G-28, if applicable
Form I-485 with two photos attached
Form I-485 Supplement, if applicable
Form I-864, if applicable
Form I-131 and/or Form I-765
G-325A
Other evidence
Supporting documentation

For more detailed information on this form see Section VI. G.

N-400

Fee payment

Form N-400 with two photos attached
Form G-28, if applicable
Copy of front and back of I-551 (Permanent Resident Card)
Other evidence
Supporting documentation

10. Mark both the envelope and the cover letter as to the nature of the submission. Example: ORIGINAL SUBMISSION - BRIEF FOR AN APPEAL - RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION - etc.

11. Use the appropriate P.O. Box as listed at the end of this section. When using a private courier to deliver mail to NSC, boldly mark the form number on both the envelope and cover letter. Example - I-129 - I-130 - I-690 - I-698, etc.
12. Use both the "LIN number" and the "A" number as an identifier, if they are available.
13. If the packet is being resubmitted in response to a REQUEST FOR ADDITIONAL EVIDENCE, please place the notice requesting the additional evidence/information on the top of the packet. Also, please use the special mailing envelope provided.
14. If evidence is being submitted in support of a previously filed appeal or motion, a cover letter stating "BRIEF FOR APPEAL", etc., should be placed on top of the packet.
15. In preparing submissions, please take note of the following:
 - a. Do not use binders or folders which cannot be easily disassembled.
 - b. Use ACCO type fasteners to hold together thick or bulky applications or petitions. Two-hole punching the top of the material for easy placement in the file is appreciated.

The use of tabs assist in locating items listed as attachments. The tabs should be placed on the bottom and not the side for ease in processing.
 - c. Avoid using heavy duty staples; instead use ACCO type fasteners or heavy clips.
 - d. Avoid submitting originals unless specifically required (Forms I-94, Labor certifications etc). Avoid submitting oversized documentation when possible.
16. If more than one case is submitted in an envelope, clearly separate the cases by rubber band, clip fasteners, "sticky notes", tabs, etc. If they are cases that should be processed together, please indicate that in a cover letter. The letter should contain a list of names and dates of birth of applicants/beneficiaries to be processed together, or a list of the different form types included in the package.
17. Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, the initial Form G-28 submitted with the application/petition MUST bear the original signature of the affected party. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.
18. Send copies of any prior approval notices with requests for extensions of stay, change of status, amended or extension petitions.
19. Keep copies of all submissions. Don't assume the officer will have access to a prior file or record. In most cases they do not! Submit as complete a packet as possible so the case

20. Be sure to complete all pertinent items on the petition or application. Ensure all entries on the forms are legible. Note the appropriate consulate, embassy, or a request to adjust status on the petition. Do not enter "N/A" when "None" is appropriate.
21. If it is believed to be a unique situation, explain it fully in an attachment to the packet, not as a cover letter.
22. Please submit certified translations for all foreign language documents. The translator must certify that she/he is competent to translate and that the translation is accurate.

Certification by Translator

Date _____ Signature _____
Typed Name _____
Address _____

- At the discretion of the officer, original documents may still be required in individual cases. Please be advised that the INS no longer returns original documents submitted with the exception of Certificates of Naturalization, Forms I-551, Forms I-94, valid passports, or those specifically requested by the officer. Such documents will be returned when they are no longer needed.

- Revised 5/18/99

25. **DUPLICATE FILINGS (without fee):** Cases will be accepted as a duplicate filing only when the INS has specifically requested that a duplicate be filed. In such a case, be sure to submit the "LIN number" of original filing or any copies of notices received from the INS on the first filing.
26. The address block on the forms is the data field captured for all mailings. Consistent with the limitations on the number of characters per line (a maximum of 32) and the total numbers of lines (4) in that field, whatever is in the block will become the mailing address used by the system. The data in these fields is entered exactly as indicated on the forms. Please include internal routing symbols in the address block, especially for large organizations. It is better to abbreviate the name of the organization and have space for the routing codes than to fully spell out the name and have notices sit in the organization's mail room.
27. **Recognized authorities -** Many I-129 petitions filed with evidence of the beneficiary's education or accomplishments include documentation submitted by various authorities. For example, petitions for artists and entertainers may include evidence the beneficiary has received an award or other recognition of achievement. Petitions for individuals employed in a specialty occupation may include evidence the beneficiary belongs to a professional organization. When an individual's awards or membership is used to support a petition, evidence establishing the reputation of that organization must also be submitted. Examples of the type of evidence needed includes the following: the size and standing of the organization or the organization's requirements for membership and any other documentation which would establish the reputation of that organization.

When an opinion from a **recognized authority** is submitted, the opinion should state: the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; how the conclusions were reached; and the basis for the conclusions, including copies or citations of any research material used.

28. Any application or petition for an individual currently in F-1 status needs to include evidence the student has been maintaining status and has been authorized employment if applicable. Such evidence usually can be satisfied by submitting the latest Form I-20AB/I-20ID and a copy of the employment authorization card.

29. Post Office Box Numbers and Zip Codes by form:

U.S. Department of Justice
Immigration and Naturalization Service
Nebraska Service Center
P. O. Box (Insert Correct Box Number listed below)
Lincoln NE (Insert Correct Zip Code listed below)

I-90	P.O. Box 87090, Lincoln, NE	68501-7090
I-102	P.O. Box 87102, Lincoln, NE	68501-7102
I-129	P.O. Box 87129, Lincoln, NE	68501-7129
I-130 (I-129F)	P.O. Box 87130, Lincoln, NE	68501-7130
I-131	P.O. Box 87131, Lincoln, NE	68501-7131
I-140	P.O. Box 87140, Lincoln, NE	68501-7140
I-290 (Appeals & Motions)	P.O. Box 87290, Lincoln, NE	68501-7290
I-360	P.O. Box 87360, Lincoln, NE	68501-7360
N-400	P.O. Box 87400, Lincoln, NE	68501-7400
I-485	P.O. Box 87485, Lincoln, NE	68501-7485
I-526	P.O. Box 87526, Lincoln, NE	68501-7526
I-539	P.O. Box 87539, Lincoln, NE	68501-7539
I-589	P.O. Box 87589, Lincoln, NE	68501-7589
I-698 (I-695/694)	P.O. Box 87698, Lincoln, NE	68501-7698
I-724 (I-212/612/690)	P.O. Box 87724, Lincoln, NE	68501-7724
I-730	P.O. Box 87730, Lincoln, NE	68501-7730
I-751	P.O. Box 87751, Lincoln, NE	68501-7751
I-765	P.O. Box 87765, Lincoln, NE	68501-7765
I-817	P.O. Box 87817, Lincoln, NE	68501-7817
I-821	P.O. Box 87821, Lincoln, NE	68501-7821
I-824	P.O. Box 87824, Lincoln, NE	68501-7824
I-864 (Affidavit of Support)	P.O. Box 87864, Lincoln, NE	68501-7864
Requested Evidence and General Correspondence	P.O. Box 82521, Lincoln, NE	68501-2521

NOTE 1: Use the box number for the *principal* application if more than one application is concurrently submitted. For example, if an I-485 is submitted with an I-131 and I-765, the application should be mailed to the P.O. Box Number for the I-485.

NOTE 2: If using overnight delivery by any private service provider, please note the box number on the envelope and use the appropriate zip code stated above.

ADDRESS
FOR PRIVATE 850 'S' Street
COURIER: Lincoln NE 68508

VI. PROCESSING TIPS FOR SPECIFIC CASES

A. Processing Tips for I-129F Petitions:

1. When filing I-129F, Petition for Alien Fiance(e), the petition should be filled out completely, with all questions addressed and answered, and all evidence submitted at the initial filing. The proper fee must be submitted. Only a United States Citizen may file.
2. 8 CFR 214.2(k), Fiancees and fiances of United States citizens, requirements are as follows:
 - a. **Petition and supporting documents;** To be classified as a fiance(e) as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I-129F. The petition with **supporting documents** shall be filed by the petitioner with the director having administrative jurisdiction over the place where the **petitioner** is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act may be accepted, provided that a certification to the authenticity of the document is made by the pertinent party.
 - b. **Requirement that the petitioner and beneficiary have met.** The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met **in person** within the **two years** immediately preceding the filing of the petition. As a **matter of discretion**, the director may exempt the petitioner from this requirement **only if**:
 - (1) if it is established that compliance would result in **extreme hardship** to the petitioner or,
 - (2) that compliance would violate **strict and long-established customs** of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the **prospective bride and groom** are prohibited from meeting subsequent to the arrangement and prior to the wedding day. **In addition** to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.
 - c. **Children of the beneficiary.** Without the approval of a separate petition on his/her behalf, a child of the beneficiary (as defined in 101(b)(1)(A),(B),(C),(D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her. All the beneficiary's children should be listed on the petition, even if they are NOT expected to immigrate to the US.
 - d. **Validity.** The approval of a petition under this paragraph shall be valid for a period of four (4) months. An expired petition may be revalidated by the director or a consular officer for an additional four (4) months assuming all conditions are met. Should the petitioner die or file a written withdrawal of the petition prior to the arrival of the beneficiary in the United States the approval of the petition is automatically terminated.

- e. **Adjustment of status from nonimmigrant to immigrant.** Upon contracting a valid marriage to the petitioner within **90 days** of his/her admission as a nonimmigrant pursuant to a **valid K visa** issued on or after November 10, 1986, the beneficiary and his/her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act.

3. REVIEW THE PETITION

Review the answer to each question on the petition and determine if the information is relevant and correct. Examples of common problems associated with the execution and filing of petitions are:

- a. Failure to include the requisite fee;
- b. Failure to sign the petition;
- c. Reversal of petitioner's and beneficiary's names;
- d. Failure to answer relevant questions;
- e. Use of N/A to answer relevant questions, ("N/A" is generally not considered an acceptable answer, often "none" is appropriate instead); and,
- f. Erroneously listing the current date as the birth date for the petitioner or the beneficiary.
- g. Failure to fully and completely establish that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition.

4. Fee, Eligibility, Jurat, Jurisdiction

When the petition is received for adjudication, it is first checked to ensure that it is properly filed before considering the merits of the petition. To be properly filed, as stated by 8 CFR 204(d)(1) and (2), the petition is signed by the petitioner, and the correct fee has been received. **If the fee has not been paid (or waived pursuant to 8 CFR 103.7(c)) or the petition has not been properly signed, the petition cannot be considered properly filed, and a formal decision cannot be rendered. If a petition is not signed by the petitioner or is signed by the beneficiary, it is not properly filed.** Next, the petitioner's address is checked to determine if our office has jurisdiction over the case. The petition must be filed in the Service Center having jurisdiction over the place where the petitioner resides.

5. Attorney of Record/Authorized Representative

Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants/petitioners signature must be the original signature on the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case

6. PAY SPECIAL ATTENTION TO THE FOLLOWING:

Name The names of the petitioner and the beneficiary are basic in establishing identity and are extremely important when trying to locate any relating INS records. Any substantial variation in the names must be satisfactorily explained by the submission of additional documents, affidavits, or other appropriate means.

Date and Place of Birth This information is essential as it relates to the identity of the individual and is often necessary to locate any relating INS records. Additionally, it may determine eligibility for the benefit sought.

Previously Filed Visa Petitions This information is often necessary to locate any relating INS records that may be relevant.

Addresses The correct addresses for both the petitioner and the beneficiary are extremely important. The petitioner's address generally establishes which INS office has jurisdiction over the petition. The addresses are also important because the petitioner and the beneficiary may have to be contacted or interviewed. However, even if personal contact is not necessary, the petitioner will have to be notified of the decision on the petition, and the beneficiary will have to be contacted concerning the issuance of an immigrant visa or adjustment of status.

Location of Consulate The location of the United States Embassy/Consulate where the beneficiary will apply for a visa must be shown on the petition. The approved petition is forwarded to the appropriate consulate. If a U.S. consulate is not present in the beneficiary's country of birth, the petitioner may request that another U.S. consulate, which is designated as an immigrant visa processing post, accept jurisdiction on humanitarian grounds. This procedure is requested through the individual consulate or the Department of State.

6. In most cases, the instructions to the Form I-129F petition will be generally sufficient. Be sure to provide translations for all foreign language documents, and attach each translation to the document to which it relates.

B. Processing Tips for I-129s - Nonimmigrant Employment Visa Petitions

Form I-129, Petition for a Nonimmigrant Worker. The form should be used for an employer to file an initial petition for an alien to come to the U.S. temporarily to perform services or labor or to receive training as an H-1B, H-2A, H-2B, H-3, L-1A, L-1B, O-1, O-2, P-1, P-2, P-3, Q, or TN-2 nonimmigrant worker. The Form I-129 is also used when requesting a change of status to such status or extension of stay in such status. However, if a consulate is to be notified in addition to a change of status or extension of stay, a Form I-824 with the proper fee must be filed. It is recommended that the I-824 be filed simultaneously with the I-129.

The form is also for an employer to petition for an extension of stay or change of status for an alien as an E-1, E-2, R-1, or TN-1 nonimmigrant. A petition is not required to apply for an E-

1, E-2, or R-1 nonimmigrant visa or admission as a TN-1 nonimmigrant. A petition is only required to apply for a change to such status, an extension of stay in such status, for an amended petition or for a change of employer.

Dependents of alien workers must file for a change of status or extension of stay on Form I-539.

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). ACWIA requires certain H1B petitioners to pay an additional fee of \$500, in addition to the standard \$110 filing fee for Form I-129 petitions. The new \$500 filing fee must be paid by U.S. employers when they file H1B petitions on or after December 1, 1998, and before October 1, 2001, for any of the following purposes:

- (1) An initial grant of H1B status for the beneficiary,
- (2) An extension of stay for individuals currently in H1B status (when it is the first extension request for the beneficiary after December 1, 1998); or
- (3) Authorization for a change in employment for individuals currently in H1B status.

The only organizations exempt from paying the additional \$500 fee for filing H1B petitions are institutions of higher education and nonprofit or governmental research organizations. Exempt organizations must complete Form I-129W and submit it with Form I-129 at time of filing. I-129's filed as amended petitions are not required to pay the \$500 fee.

Duplicate copies of the Form I-129 and supporting documents should be submitted, particularly if the petition will be sent to a consulate or port of entry.

A **legible** copy of the front and back of each Form I-94 is required for beneficiaries of the Form I-129 and their dependents filing a Form I-539. The original Form I-94 is no longer required and will not be annotated, if submitted, to show an extension of stay or change of status in these cases. The approval notice, Form I-797, will serve as evidence of the extension or change of status.

PROPER COMPLETION OF THE FORM I-129

The Form I-129 should be properly completed. Many cases are rejected for the improper fee and because the petitioner has not signed the form in part 6. Please read the instructions carefully before filing the petition.

Question 4 of Part 2 on the Form I-129 asks for the type of action being requested. Three choices are offered. Choose **ONLY ONE**. The CLAIMS processing program will accept **ONLY ONE** response. If two or more selections are made, a photocopy of the form will be returned for correction. This delays the processing of the petition.

MULTIPLE BENEFICIARIES

Page 1 of the instruction sheet describes when more than one alien may be included in a single petition. Multiple beneficiaries may be included in a single petition for the specified nonimmigrant classes **ONLY**, and **ONLY** for the specified purposes. The Supplement-1 sheet

must be completed and submitted with the Form I-129 when more than one person is included in the petition.

Do not submit an I-539 to extend the stay of a principle nonimmigrant classified as an E, H, L, O, P, Q, R, or TN worker. These classes of workers are extended based on the Form I-129. However, extensions for the principle's dependents are filed on an I-539.

When requesting a change of classification or extension of stay, **do not** submit Forms I-506 or I-539 for the principal worker. The Center will continue to accept the old Form I-539 for dependents only. Principal workers must be extended or have their status changed by using the Form I-129.

Do not submit an Form I-539 listing only one dependent if a change of status or extension is being requested for more than one dependent. List all dependents requiring extension or change of classification. Include the correct fee.

Part 5 of the Form I-129 asks for the address where the alien will be employed if that employment will not be at the address of the petitioner. It is critical that petitioners located outside the jurisdiction of our Center fill out Part 5 completely if the alien is to be employed within NSC's jurisdiction. If either Part 1 or Part 5 do not indicate that the alien will be employed within NSC's jurisdiction, the case may be transferred to the appropriate Service Center.

The relating supplement sheet for each classification should also be submitted with a Form I-129.

H NONIMMIGRANT CLASSIFICATIONS

H-1B GENERAL INFORMATION

Temporary Intent. The approval of a permanent labor certification or the filing of preference petition for an alien shall not be a basis for denying an H-1B petition, a request to extend an H-1B petition, or 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 H-1B 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.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-1B nonimmigrant (except DOD) is limited to six years. Although an alien may be admitted initially for a period up to three years and given extensions in increments of three years, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the six year limit. The six year limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from H to L nonimmigrant category or vice versa. After the six year period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for one year. Brief trips to the United States for business or pleasure will

not be interruptive of the one-year requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for the exception.

H-1B, ALIEN COMING TO PERFORM SERVICES IN A SPECIALTY OCCUPATION

The petitioner must establish that the beneficiary meets the qualifications of the classification and that the position is a specialty occupation. To qualify as a specialty occupation, the position must meet one of the following criteria:

- a. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular profession;
- b. 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;
- c. The employer normally requires a degree or its equivalent for the position; or
- d. 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.

Prior to the filing of a petition for an H-1B classification, the petitioner must obtain a certified Labor Condition Application (LCA), ETA-9035, from the Department of Labor. The LCA should be valid for the period of time requested for the occupation, because the validity of the approved petition cannot extend outside the dates on the LCA. Multiple unnamed beneficiaries may be included on the LCA; however, the petitioner must reference, by file number, all previously approved petitions that used the same LCA. Therefore, once a slot on the LCA has been used for a specific alien, that slot cannot be used for another alien even if the original alien leaves that job permanently before the LCA has expired. Since the validity dates of the LCA are used when setting the validity dates of the petition, it is important to remember that if the validity period of the LCA begins after the beneficiary's authorized period of stay expires, the change of status or extension of stay cannot be granted.

The beneficiary must meet one of the following criteria to qualify to perform services in a Specialty Occupation:

- a. Holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university; or
- b. Holds 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; or

- c. Holds an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that profession in the state of intended employment; or
- d. Has 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 has recognition of expertise in the specialty through progressively responsible positions related to the specialty.

An agent/employment contractor must submit an itinerary specifying 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.

H-1B PHYSICIANS

Petitions for physicians coming to the United States primarily to teach or conduct research, both at or for a public or nonprofit private educational or research institution or agency, in which no patient care will be performed except that which is incidental to the teaching or research, must be accompanied by the same documentation required for a petition for an alien coming to perform services in a specialty occupation.

Petitions for physicians involved in direct patient care must also be accompanied by evidence, in addition to the above requirements, that the physician has a state license or other authorization required by the state of intended employment to practice medicine; that the physician has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the U.S. or in a foreign state; that the alien passed the Federal Licensing Examination (FLEX) or Parts I, II, and III of the National Board of Medical Officers (NBME); and is competent in the English language. To establish competency in the English language, the INS will require evidence that the alien has passed the English test given by the Educational Commission of Foreign Medical Graduates (ECFMG).

If the alien received his/her medical education in Canada, the English competency test is not required.

If the alien received his/her medical education in the United States, neither FLEX, NBME nor the English competency is required.

H-1B, ALIEN OF DISTINGUISHED MERIT AND ABILITY IN THE FIELD OF FASHION MODELING

The petitioner must submit a certified LCA and establish the position requires prominence. Prominence may be established if the services to be performed involve events or productions which have a distinguished reputation OR the services to be performed are for an organization or establishment that has a distinguished reputation or record of employing prominent persons.

The petition must also be accompanied by documentation to establish that the beneficiary is a fashion model of distinguished merit and ability and copies of written contracts or summaries of oral contracts between the petitioner and beneficiary.

A petitioner must also establish that the beneficiary is a fashion model of distinguished merit and ability by showing that the alien has done any two of the following

- a. Has been the recipient of significant national or international awards or prizes for services performed;
- b. Has achieved national or international recognition for achievements evidenced by critical reviews or other published material by or about the alien in major newspapers, trade journals, magazines, or other publications;
- c. Has performed and will perform services as a fashion model for employers that have a distinguished reputation;
- d. Has received recognition for significant achievements from organizations, critics, or other recognized experts in the field of fashion modeling. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
- e. Has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

H-1B, ALIEN INVOLVED IN DEPARTMENT OF DEFENSE RESEARCH & DEVELOPMENT

The Secretary of Defense administers this classification which applies to aliens coming to perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a co-production project provided for under a government-to-government agreement.

Evidence should be submitted to indicate the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which he/she will be performing. No LCA is required with this classification.

The petition should also be submitted with:

- a. A verification letter from the DOD project manager stating that the alien will be working on a cooperative research and development project;
- b. A general description of the alien's duties on the particular project, with the actual dates of the employment indicated; and

- c. A statement indicating the names of aliens currently employed on the project in the U.S. and their dates of employment and the names of aliens whose employment on the project ended in the past year.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-1B nonimmigrant involved in DOD research and development project is limited to ten years. Although an alien may be admitted initially for a period up to five years and given extensions in increments of five years, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the ten year limit. The ten year limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from H to L nonimmigrant category or vice versa.

After the ten year period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for one year. Brief trips to the United States for business or pleasure will not be interruptive of the one-year requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for the exception.

H2A, H2B, and H3 GENERAL INFORMATION

Temporary Intent. The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by or in a training position with the same petitioner, shall be a reason, by itself, to deny a petitioner's extension of request and therefore the alien's extension of stay.

H-2A, ALIEN COMING TO PERFORM AGRICULTURAL WORK OF A TEMPORARY OR SEASONAL NATURE

The petition for an H-2A may be filed by the employer or the employer's agent or an association of the United States agricultural producers named as a joint employer on the labor certification.

The H-2A petition must be filed with an approved ETA-750, Application for Alien Employment Certification and a certification letter. The certification is usually not valid for more than one year. If the petition is filed with only a certification letter from the Department of Labor, it will be returned and the ETA-750 will be requested. If joint employers are involved, Part C of Section 3 of the H supplement of Form I-129 must be completed.

Any subsequent substitutions or replacements of agricultural workers within the approved period will need a copy of the Form ETA-750. Any request for a new extension will need a new agricultural labor certification. In both instances, a copy of the prior approval notice is to be submitted.

The H-2A regulations allows for multiple beneficiaries if they are included on the same labor certification and will perform the same duties. Be sure to state the number of **unnamed** beneficiaries. In the case where you have multiple **named** beneficiaries, you will need to complete the Supplement-1 sheet naming all the individuals.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-2A nonimmigrant is limited to three years. Although an alien may be admitted initially for a period up to one year and given extensions in increments of one year, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the three year limit. [The three year limit applies to the alien's total period of stay, regardless of the number of changes in employers].

H-2B, ALIEN COMING TO PERFORM NONAGRICULTURAL WORK OF A TEMPORARY OR SEASONAL NATURE

A nonagricultural temporary worker is an alien who is coming temporarily to the U.S. to perform temporary services or labor who is not displacing U.S. workers capable of performing such services or labor and whose employment is not adversely affecting the wages and working conditions of U.S. workers.

A U.S. employer, or an authorized representative of a foreign employer having a location in the U.S., may file an H-2B petition. Prior to filing the petition, a temporary labor certification must be obtained from the Secretary of Labor.

The petition must be filed with a certified temporary labor certification; documentation that the alien qualifies for the job offer as specified in the application for labor certification; and a statement describing in detail the temporary situation, or conditions which make it necessary to bring the alien to the U.S., and whether the need is a one-time occurrence, seasonal, peakload, or intermittent. Additionally, if the notice that certification cannot be made is submitted, countervailing evidence must be submitted and must address the availability of U.S. workers, the prevailing wage rate for the occupation of the United States and each of the reasons why the Department of Labor could not grant a labor certification. Any approval of a case without a labor certification must be certified to the Administrative Appeals Unit (AAU) for their concurrence.

Multiple beneficiaries may be included in an H-2B petition if they are included on the same labor certification and will perform the same duties.

H2B petitions may be filed for unnamed beneficiaries when the petitioner establishes they have been unable to recruit workers prior to filing the petition. An explanation for why they were unable to do so must be submitted with the request. Otherwise, all beneficiaries must be named.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-2B nonimmigrant is limited to three years. Although an alien may be admitted initially for a period up to one year and given extensions in increments of one year, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the three year limit. The three year limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from H to L nonimmigrant category or vice versa.

After the three year period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for six months. Brief trips to the United States for business or pleasure will not be interruptive of the one-year requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for the exception.

H-2B, ATHLETES

Since most major league baseball and hockey teams have been pre-certified by the DOL, they do not have to go through the regular labor certification procedure. The petition only needs to be submitted with the blanket certification letter from the DOL and a tendered contract signed by a

club official. However, if a baseball team or hockey team is not associated with the major league, the petitioner must go through the regular labor certification procedure.

H-3, TRAINEE

This classification applies to an alien who seeks to enter the U.S. at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor. Multiple beneficiaries may be included in an H-3 petition.

The petitioner is required to demonstrate the following:

- a. The proposed training is not available in the alien's own country;
- b. The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
- c. The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
- d. The training will benefit the beneficiary in pursuing a career outside the United States.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-3 nonimmigrant is limited to two years. Although an alien may be admitted initially for a period up to two years and given extensions in any increment, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the two year limit. The two year limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from H to L nonimmigrant category or vice versa.

After an eighteen month period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for six months. Brief trips to the United States for business or pleasure will not be interruptive of the one-year requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for the exception.

H-3, PARTICIPANT IN A SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM

The alien must be coming to the U.S. to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities. The requirements for the H-3 Trainee shall not apply to petitions for a participant in a special education exchange visitor program.

The petitioner must submit a description of the training program and the facility's professional staff and details of the alien's participation in the training program and 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.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an H-3, special education trainee is limited to eighteen months. Although an alien may be admitted initially for a period up to eighteen months and given extensions in any increment, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the eighteen month limit. The eighteen month limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from H to L nonimmigrant category or vice versa.

After an eighteen month period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for six months. Brief trips to the United States for business or pleasure will not be interruptive of the six month requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for the exception.

L NONIMMIGRANTS

The L classification was designed to facilitate the temporary transfer of foreign nationals with management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate. Petitioners seeking to classify aliens as intracompany transferees must file on Form I-129, Petition for a Nonimmigrant Worker, with the appropriate Service Center for a determination of whether the alien is eligible for L classification and whether the petitioner is a qualifying organization.

The definition of manager includes functional managers or those managers that manage an essential function within the company. The limitation of stay is seven years for executives/managers and five years for specialized knowledge personnel. The definition of an affiliate was modified to include partnerships that are organized in the United States. The partnership must provide accounting services along with managerial and/or consulting services. It must also market 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. The INS does not focus on staffing levels alone to determine whether a manager is indeed a manager.

Basic requirements for L classification. The following requirements apply to all petitions filed for L classification:

- a. There must be a qualifying relationship between the business entity in the United States and the foreign operation which employs the alien abroad;
- b. The alien must have been employed abroad for at least one continuous year in a full-time job with a qualifying organization within the three years preceding the filing of the petition. 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.
- c. The alien's prior year of employment abroad must have been in a managerial, executive, or specialized knowledge capacity. The prospective employment in the United States must also be in a managerial, executive, or specialized knowledge capacity. However, the alien does not have to be transferred to the United States in the same capacity in which he or she was employed abroad. For example, a manager abroad could be transferred to the United States in a specialized knowledge capacity or vice versa.

Petitioner's Status. The petitioner for an intracompany transferee must be a firm, corporation, or other legal entity, or a parent, branch, subsidiary, or affiliate thereof which is seeking to transfer a foreign employee to the United States temporarily from one of its operations outside the United States. Either the United States employer or the foreign employer may file a petition with the INS to classify the alien as an intracompany transferee. The petitioner must be able to document the existence of foreign operations to which the employee can reasonably be expected to be transferred at the end of his or her assignment in the United States. The petitioner must be actively engaged in providing goods and/or services in the United States and abroad, either directly or through a parent, branch, subsidiary, or affiliate, with employees in both countries, for the duration of the alien's stay. The mere presence of an agent or office of the petitioner is insufficient evidence of this requirement.

Business relationships. For purposes of L classification, ownership and control are the factors for establishing a qualifying relationship between business entities. The United States and foreign business must be legal entities. In the United States, a business is usually in the form of a corporation, partnership, or a proprietorship.

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

Alien's Employment. Detailed descriptions of the alien's continuous year of employment are required from the petitioner to determine if the alien was and will be employed in a managerial, executive, or specialized knowledge capacity.

Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. Supervisors who plan,

schedule, and supervise the day-to-day work of nonprofessional employees are not employed in an executive or managerial capacity unless those employees he or she supervises are professionals. In addition, individuals who primarily perform the tasks necessary to produce the product(s) or provide the service(s) for an organization are not employed in an executive or managerial capacity.

The duties of the position must be primarily of an executive or managerial nature. This does not exclude from the duty of a manager executive activities that are not strictly managerial but are common to those positions, such as customer and public relations, lobbying, and contracting. A manager may manage a function within an organization, but he must be at a senior level within the organizational hierarchy or with respect to the function managed.

New Office. The intracompany transferee who is coming to the United States as a manager or executive to open or be employed in a new office may be classified as a manager or executive during the one year required to reach the "doing business" standard if the factors surrounding the establishment of the proposed organization are such that it can be expected that the organization will, within one year, support a managerial or executive position. The factors to be considered include amount of investment, intended personnel structure, product or service to be provided, physical premises, and viability of the foreign operation.

Specialized Knowledge implies that eligibility is dependent upon a showing that a person possesses a type of knowledge and advanced level of expertise that are different from the ordinary or usual in a particular field, process, or function. Knowledge which is widely held or related to common practices or techniques and which is readily available in the United States job market is not specialized for purposes of L classification. The level of knowledge required and the employment of the special alien must directly relate to the interests of the petitioner. The knowledge must relate exclusively to the petitioner's business. For example, knowledge which is essential to a special research program or expert knowledge regarding a firm's materially different product or manufacturing process may be deemed specialized. Specialized knowledge does not extend to persons whose general knowledge and expertise enable them to merely produce a product or provide a service.

Types of L petitions: Individual

Evidence for individual petitions. An individual petition filed on Form I-129 shall be accompanied by:

- a. Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in 8 CFR 214.2(l)(1)(ii)(G).
- b. Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- c. 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.
- d. Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in

the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Temporary Intent. The approval of a permanent labor certification or the filing of preference petition for an alien shall not be a basis for denying an L petition, a request to extend an L petition, or 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.

Limits on Temporary Stay. The total period of a temporary stay in the United States for an L executive or manager is limited to seven years and for specialized knowledge personnel it is limited to five years. Although an alien may be admitted initially for a period up to three years and given extensions in increments of two years, each period of stay requested and authorized may be less than the maximum period allowed. Therefore, the number of petitions and extensions granted during the alien's authorized stay are not relevant as long as the alien's total period of stay does not exceed the seven year limit for executives and managers and five year limit in the case of specialized knowledge. The seven and five year limit applies to the alien's total period of stay, regardless of the number of changes in employers or change in classification from L to H nonimmigrant category or vice versa. The seven/five year limit applies to both current and future L visa holders.

An L1B specialized knowledge alien may change to an L1A executive/manager to receive the benefits of the seven year limit of stay. The petitioner must have an I-129 petition approved in the alien's behalf as an executive or manager for six months to be able to receive the limitation of stay of seven years. This means that a specialized knowledge alien must have an I-129 approved as an executive or manager prior to the completion of four and one-half year's period of stay in the United States.

After the seven/five year period of stay, the alien cannot seek an extension of stay, change of status, or to reenter the United States in the H or L visa classification unless he or she has resided and been physically present outside the United States for one year. Brief trips to the United States for business or pleasure will not be interruptive of the one-year requirement but will not count towards fulfillment of that requirement. This limitation does not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year. In addition, the limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. An example of aliens who would qualify for an exception is a business person who works part-time or intermittently in the United States. The burden is on the petitioner to establish that the alien qualifies for the exception.

New Office Petitions. 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:

- a. Sufficient physical premises to house the new office have been secured;

- b. The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- c. The intended United States operation, within one year of approval of the petition, will support an executive or managerial position supported by information regarding:
 - 1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - 2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - 3) The organizational structure of the foreign entity.

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; and
- c. The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

O NONIMMIGRANTS

Under Section 101(a)(15)(O)(i) of the INA, an alien who has extraordinary ability in the sciences, arts, education, business or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry may be classified as an O-1. The event in which the beneficiary will participate must require the services of an alien of extraordinary ability or achievement.

Two separate categories exist for O-1s:

- a. Aliens of extraordinary ABILITY in the SCIENCES, ARTS, EDUCATION, BUSINESS OR ATHLETICS.
- b. Aliens of extraordinary ACHIEVEMENT in the MOTION PICTURE OR TELEVISION INDUSTRY.

When applied to beneficiaries in the sciences, education, business or athletic fields, extraordinary ability means a level of expertise which indicates that the person is one of a small percentage who

has risen to the top of his/her field. This category is more restrictive than the extraordinary achievement in the TV/motion picture category and more stringent than what is contemplated as extraordinary ability in the arts. Extraordinary ability in the arts merely means "distinction". Therefore, different evidence is needed to establish eligibility for each of these categories.

Accompanying aliens coming in solely to assist in the artistic or athletic performance of an O-1 alien may be petitioned and approved for O-2 classification. Also an accompanying alien having skills and experience with an O-1 beneficiary in motion pictures or television may be admitted as an O-2. His/her services must be critical, either on a pre-existing or long standing relationship with the O-1 or, if in connection with a specific production, must be because significant production will take place both inside and outside the US and the continuing participation of the alien is essential to the successful completion of the production.

In addition to establishing the eligibility of an alien for the O-1 classification, the petitioner must obtain CONSULTATIONS. (See the List of Appropriate Organizations for Consultations)

O-1 Aliens of Extraordinary Achievement in the television or motion picture industry need a consultation from an appropriate union representing the beneficiary's occupational peers AND a consultation with a management organization in the area of the beneficiary's field of expertise. These consultations must contain

(1) a description of the beneficiary's ability and achievements in the field of endeavor, (2) a description of the nature of the duties to be performed, and (3) a determination as to whether the position requires the services of an O-1, alien of extraordinary achievement.

O-1 Aliens of Extraordinary Ability in the sciences, arts, education, business, or athletics, need a consultation from a peer group (preferably a labor organization) in the area of the beneficiary's occupational specialty. These consultations must contain (1) a description of the beneficiary's ability and achievements in the field of endeavor, (2) a description of the nature of the duties to be performed, and (3) a determination as to whether the position requires the services of an O-1, alien of extraordinary ability. **NOTE: THE PETITIONER IS NOT REQUIRED TO FURNISH AN ADVISORY OPINION FROM A LABOR ORGANIZATION, HOWEVER IF THIS IS NOT SUBMITTED BY THE PETITIONER, THE REGULATIONS REQUIRE THAT THE INS SOLICIT SUCH CONSULTATION.**

O-2 Accompanying Alien of an O-1 Alien of Extraordinary Ability needs a consultation from the appropriate labor organization or union representing the beneficiary's occupational peers. The consultation must contain the following information: (1) A description of the beneficiary's essentiality to, and working relationship with, the O-1, and (2) a statement as to whether there are available U. S. workers who can perform the support services.

O-2 Accompanying Alien of an O-1 Alien of Extraordinary Achievement in the Motion Picture or TV Industry must submit a consultation from the appropriate union representing the beneficiary's occupational peers AND with a management organization in the area of the beneficiary's occupational specialty. This consultation must contain the following information: (1) A description of the beneficiary's skills and experience with the O-1 alien and (2) a statement on whether the beneficiary has a longstanding working relationship with the O-1, or (3) whether

significant production will be in the U.S. and abroad and if the continuing participation of the beneficiary is essential.


O-3 is the spouse or child of an O-1 or O-2.

P NONIMMIGRANTS

An alien may be classified under Section 101(a)(15)(P)(i) of the Immigration and Nationality Act if he is coming to perform services as an internationally recognized athlete or member of an internationally recognized entertainment group.

The P-1 classification is divided into three separate categories:

- (a) Internationally-recognized individual athletes
- (b) Internationally-recognized athletic teams
- (c) Internationally-recognized entertainment groups

 **NOTE:** Individual entertainers who are not part of a group cannot qualify under the P-1 category.

The essential support persons to P-1's will also be classified as P-1's, but they must be filed for on a separate petition from the principal alien.

An alien may be classified under Section 101(a)(15)(P)(ii) of the INA as a P-2, if she/he is individually or as part of a group coming to perform as an artist or entertainer under a reciprocal exchange program. To date, there have been two approved reciprocal exchange programs negotiated: (1) American Federation of Musicians in Canada and American Federation of Musicians in the United States and (2) Actors' Equity Association of the United States and Canadian Actors' Equity Association.

An alien may be classified under Section 101(a)(15)(P)(iii) of the INA as a P-3, if she/he is an artist or entertainer and is either individually or as part of a group, coming to perform, teach or coach under a commercial or noncommercial program that is culturally unique.

Consultations are required from a labor organization or union having expertise in the P-1's occupational specialty. For P-1 essential support aliens, a consultation from the labor organization or union must state the essentiality to and working relationship with the artist or entertainer they support. This consultation must also state whether there are available U.S. workers who can perform the services.

Consultations for P-2's are required from the appropriate labor organization or union in the U. S. which was involved in negotiating or concurring with the reciprocal exchange of U. S. and foreign artist(s) or entertainer(s). It must contain a statement as to the bona fides of the exchange program; and a determination as to whether the exchange program meets the regulatory

requirements such as whether the exchange involves similarly placed artists or whether the terms and conditions of employment are similar.

Consultations for P-3's involved in a culturally unique program, are required from the appropriate labor organization or union representing the beneficiary's occupational peers. The consultation must include: (1) An evaluation of the cultural uniqueness of the alien's skills; (2) A statement as to whether the events are cultural in nature; and (3) An indication of whether the event or activity is appropriate for this classification.

Consultations for P-3 essential support aliens are required from the appropriate labor organization or union representing the beneficiary's occupational peers. The consultation must contain an evaluation of the alien's essentiality to and working relationship with the artist or entertainer and a statement as to whether there are available U. S. workers who can perform the services.

ADDITIONAL PROCESSING INFORMATION ABOUT FOR O & P NONIMMIGRANTS

1. **DUPLICATE DOCUMENTS:** All petitioners and attorneys should be reminded that it is very important that the petition and supporting documentation be submitted **IN DUPLICATE** unless the beneficiary is already in the U.S. and applying for a change of status or an extension of stay. There is only one other exception to this - if the beneficiary is Canadian, and therefore visa exempt, and requests that the petition be sent to a POE or PFI, only a duplicate copy of the petition should be submitted, not copies of the documentation.
2. **SUBSTITUTING MEMBERS FOR P-1 GROUPS:** The process for substituting or adding members to an P-1 group already in the United States is: A petition should be filed for the new group members as P-1's, and it should be accompanied by evidence of the approval of the group's P-1 petition and the required consultation.
3. **P-1 FOR US BASED ENTERTAINMENT GROUPS:** A question was raised as to whether the P-1 classification would apply to individual aliens coming to join U.S. based entertainment groups. A memorandum from Headquarters Adjudications dated June 29, 1993, states that P-1 petitions should not be approved for individual entertainers coming to join U.S. based entertainment groups such as, but not limited to, orchestras and symphonies. The proper classification for these aliens is either O-1 or H2B. P-1 petitions for individual entertainers may be approved only in the instance where the alien is coming to the United States to join a foreign based entertainment group.
4. **P-1 SUPPORT PERSONNEL FOR ATHLETES:** The P-1 classification also includes support personnel for an athlete or athletes. This may be a coach or trainer of an athlete or team accompanying the P-1 athlete or team, however, there must be a P-1 athlete in the U.S. who the accompanying alien is supporting. This P-1 support personnel can also apply to scouts, trainers, and other team officials. Coaches of a United States sports team composed totally of U.S. citizen athletes would not be eligible for P-1 since they are not performing themselves nor are they supporting a P-1 athlete.

5. **TRADING P-1 ATHLETES:** An athlete who had previously been granted P1 status to play for one sports team and is now being traded to another team will be automatically granted employment authorization with the new team for a period of 30 days after the acquisition by the new team. The new organization must then file a new petition under the P classification, as applicable, as soon as possible after the acquisition but in no case later than the 30 days.
6. **NO ADVISORY OPINIONS SUBMITTED:** If the petitioner is not submitting the required advisory opinion, s/he must submit evidence that an appropriate organization for the beneficiary's particular field of endeavor does not exist.
7. **FASHION MODELS AS O-1s:** Fashion models are still included in the H-1B classification, however, a fashion model who is at the very top of his/her field could apply as an O-1. This model would, of course, need to meet the higher standards, for the extraordinary ability in the field of business. Fashion modeling is not included in the arts classification.
8. **FASHION MODEL SUPPORT ALIENS:** An essential support alien accompanying a fashion model would not be admissible as an O-2 as the O-2 classification is reserved for aliens that are accompanying O-1s in the field of arts and athletics (not the business O-1s).
9. **O PETITIONERS MUST BE US BASED:** An O-1 or O-2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent.
10. **O-1s VS H-1Bs IN BUSINESS, EDUCATION, ATHLETICS AND SCIENCES:** The O-1 classification for aliens in the fields of business, education, athletics, and the sciences is reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. The majority of this group of aliens may still be eligible for the H-1B classification as most of the occupations will probably be specialty occupations.
11. **SINGLE/MULTIPLE BENEFICIAIREIS IN O PETITIONS:** Only one O-1 may be petitioned for on each petition. Multiple O-2's may be petitioned for on a separate petition, but may be grouped together only if they will be assisting the same O-1 alien for the same events or performances for the same time and same location(s). However, if the O-2's will be applying at different consulates or ports of entry, then separate petitions for each consulate must be filed.
12. **MULTIPLE BENEFICIARIES/PETITIONS FOR P-1s:** Multiple P-1 principal aliens, if they are members of a group seeking classification based on the reputation of the group, may be petitioned for on one petition. Essential support alien P-1s must be petitioned for on a separate petition from the principal aliens. If they are applying at different consulates or ports of entry, separate petitions must be filed.
13. **AGENT PETITIONERS:** There are specific evidence requirements for "agent petitioners" for the Os and Ps. Complete itineraries of the services or engagements must be submitted which show the dates of the services and the names and addresses of the establishments or locations where the services will be performed. An agent performing the functions of an employer must

specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary. Any other services planned for the requested period of time must also be furnished. The INS may require a copy of the contract between the agent and beneficiary. The burden is on the agent to explain the terms and conditions of the employment and provide any required documentation.

14. P-1 BASEBALL AND HOCKEY PLAYERS ADJUDICATED AT NSC: The INS has entered into an agreement with Major League Baseball to process all petitions for P-1 professional baseball players at the NSC. (Note: All petitions for H-2B baseball players will also be filed at the NSC.) The special guidelines for these petitions are outlined in the section "P-1 Baseball Players" in this manual.

The INS has entered into an agreement with the National Hockey League that all O, P, and H-2B hockey player petitions will also be filed at the NSC. The special guidelines for these petitions are outlined in the section "P-1 Hockey Players" in this manual.

P-1 HOCKEY PLAYERS:

Hockey players who have signed a major league contract are eligible as P-1s. (Minor league contract holders must file as H-2B nonimmigrants.)

The evidence required to support the petition:

- a. Copy of the major league contract
- b. A letter from the League regarding the process of establishing the level of competition in the League
- c. A letter from the NHL Player's Association (a labor organization) (An individual labor consultation letter is therefore, NOT required.)

Because INS Headquarters and the NSC have copies of the letters listed above (which describe the process for establishing the level of competition in the league and which provides the consultation from the appropriate labor organization), the major league hockey club filing for the player will not be required to submit anything more than the major league contract when filing their petition.

The length of the stay will be the length of the event, either the season or the length of the player's contract. These procedures have been established for hockey players, not for individuals to engage in outside activities such as summer camps.

Essential support personnel: The team seeking support personnel must have at least one P-1 alien playing on it and submit evidence to support this. They may not have a P-1 presently on the team, but if evidence is submitted to show that they will have one during the forthcoming season, this will be sufficient. Eligibility can also be established by submitting evidence that they have employed alien players with NHL contracts in the immediate prior season and that they have an affiliation with a major league team which will continue through the upcoming season.

Linesmen, referees, and other game officials will be petitioned for by the League rather than a team. They will be accorded P-1 support status.

For trades made of P-1 hockey players between two U.S. teams, the players will be allowed to play for the new team for a thirty day period, but a new petition must be submitted for that player within that time frame. This provision is for trades between U.S. teams only.

P-1 BASEBALL PLAYERS:

Players who have signed a major league contract will be eligible as P-1 baseball players.

Essential support personnel may be approved for minor league teams if evidence is submitted to establish that the team has at least one P-1 player on it. As in hockey, the officials and linesmen will be petitioned for by the League rather than the teams.

A letter from the Major League Baseball Players Association (MLBPA) serves as the required consultation and it establishes that baseball players who have signed a major league contract are eligible for either P-1 or O-1 classification. The INS has determined that since HQADN and the NSC have copies of the above letter and the league letter (which describes the process for establishing the level of competition in the league), the major league baseball club filing for the player does not need to submit anything more than the major league contract when filing the petition.

The length of stay of the P-1 baseball player will be the length of the contract or the length of the season.

Traded players will be able to work for the new team up to 30 days, however, within that time period the new team must file a petition on the player's behalf.

The following information may be of assistance to the petitioner in obtaining the consultations which are necessary for the particular type of O or P petitions he/she is filing. There is a separation of organizations from those which are labor entities and those which are peer/management groups.

LIST OF APPROPRIATE ORGANIZATIONS FOR CONSULTATIONS (ADVISORY OPINIONS):

LABOR AND MANAGEMENT LISTS FOR CONSULTATION REQUESTS:

a. UNIONS WITH SUBSTANTIAL MEMBERSHIP IN THE ARTS, ENTERTAINMENT, AND MEDIA INDUSTRY:

Actors Equity Association

Attention: Stefan Fitterman or Chuck Blasius

165 West 46 St.

New York, NY 10036 Phone 212-869-8530 FAX 212-719-9815

(Performers (other than musicians), stage managers, assistant stage managers employed in the "live", dramatic, and musical theater. Jurisdiction also includes revues, theater, and theme parks. See AGVA also.)

American Federation of Musicians

Attention: Steve Sprague, Secretary-Treasurer

1501 Broadway

New York, NY 10036 Phone 212-869-1330 FAX 212-764-6134

(All musicians and vocalists established as part of the musical group, conductors, music librarians, arrangers, copyists, composers, instrumental musicians, and orchestra conductors, too.)

American Federation of Television and Radio Artists

1. Attention: Bruce York, National Exec. Director

260 Madison Ave.

New York, NY 10016 Phone 212-532-0800 FAX 212-532-2242

2. Mark A. Farber, Exec. Director (West Coast Office)

6922 Hollywood Blvd.

Hollywood, CA 90028 Phone 213-461-8111

(Performers (other than musicians) who are employed by the broadcasting, cable, and/or recorded media, including disc and video/audio tapes, announcers, newsmen, anchors, and sportscasters in this media).

American Guild of Musical Artists

Attention: Dorothy Kochiras, Executive Associate

1727 Broadway (55th Street)

New York, NY 10019 Phone 212-265-3687 FAX 212-262-9088

(All performers (except musicians) opera stage managers, stage managers for modern and ballet dance, choreographers employed in opera, ballet, and dance, also concert (solo) artists, including musicians also opera directors.) For choreographers in musical theater, refer to SSDC.

American Guild of Variety Artists

Wade Alexander
184 Fifth Avenue
New York, NY 10010 Phone 212-675-1003 FAX 212-633-0097

(Performers (except musicians) in ice shows and circuses performing in hotels and cabarets as part of a variety show. Magicians and most other variety type entertainers.)

Association of Theatrical Press Agents and Managers

Merle Debuskey
300 West 55 Street
New York, NY 10019 Phone 212-247-6634

OR

Dorothy Olim, Secretary-Treasurer
165 West 46th St.
New York, NY 10036 Phone 212-719-3666 FAX-212-302-1585
(Theater and concert hall managers, company managers, and agents.)

Directors Guild of America

Susan Hendricks, Asst. Exec. Secretary
7920 Sunset Blvd.
Los Angeles, CA 90046 Phone 310-289-2000/(800-421-4173)
FAX 310-289-2024

(Directors, unit production managers, assistant directors, associate directors, technical coordinators, stage managers (tv), and production assistants (tv) employed on theatrical or feature motion television programs on film or tape, public service and promotional announcements, music and other videos, industrial film and videos, documentary films and videos, and all film and tape material produced for video cassette. Not for Opera, see AGMA)



NOTE: The Directors Guild has entered into an agreement with two management organizations to process consultations for aliens employed in certain fields in the motion picture or television industry. In the following instances, petitioners may submit a request for a consultation directly to the Directors Guild which will provide its own consultation and also obtain the necessary consultation from the appropriate management organization.

1) Motion Picture and Television Directors

The Directors Guild has entered into an agreement with the Alliance of Motion Picture and Television Producers to provide consultations for alien directors to direct motion pictures or television programs and accompanying aliens.

2) Commercial and Music Videos

The Directors Guild in conjunction with the Association of Independent Producers will provide consultations for directors coming to direct commercials and music videos and accompanying aliens.

3) Accompanying Aliens

The Directors Guild with either of the above two management organizations will provide consultations for accompanying aliens in the following categories: assistant director, associate director, stage manager, technical coordinator, and unit production manager.

Hebrew Actors Union

Bernard Sauer, President

31 E. 7th St.

New York, NY 10003 Phone 212-674-1923

(Performers (except musicians) who are engaged in the field of Hebrew or Yiddish language theater.)

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada

Bryan Unger

1515 Broadway Ste. 601

New York, NY 10036 Phone 212-730-1770

(All craft and technical occupations associated with motion picture production, television broadcasting, sound and video recording, cable, legitimate theater, and audio visual materials. (costume designers.) Hairdressers, make-up technicians, costumers, sound and film editor technicians in live, dramatic and musical theater, opera, film, tv, radio, variety shows, etc. Opera set designers too. (Also see USA).

International Brotherhood of Electrical Workers

Reginald Gilliam, Director

Broadcasting and Recording Dept.

1125 15th St. NW

Washington DC 20095 Phone 212-833-7000

(Technical and craft personnel employed in broadcasting, television, cable operations, sound and video recording, and program production.)

International Brotherhood of Teamsters

East: Thomas O'Donnell

Director, Motion Picture and Theatrical Trade Div.

Local 817 1 Hollow Lane

Lake Success. N. Y. 11042

Phone 516-365-3470

Drivers and helpers in the motion picture, radio, and television industries, also in all "live" productions such as theater and concerts.

International Photographers Guild

Bruce Doering, Business Representative

7715 Sunset Blvd.

Hollywood, CA 90046

(Directors of photography (Cinematographers) technical and craft personnel)

Italian Actors' Union (IAU)

Olga Barbato

1 World Trade Center

Suite 2565

New York, NY. 10048 Phone 212-488-7573

Performers (other than musicians) who are engaged in Italian language theater.

National Association of Broadcast Employee and Technicians

Kenneth Moffet, Asst. to the President

71701 Wisconsin Ave. NW Ste. 800

Bethesda, MD 20814 Phone 301-657-8420

(Technical and craft personnel employed in broadcasting, telecasting, recording, filming, and allied industries.)

National Writers' Union

Associate Director: Anne Wyville

13 Astor Place

New York, NY. 10003 Phone 212-254-0279

Writers - newspapers, magazines, books-(print media)

Newspaper Guild

Pres. Chas. Dale

8611 Second Avenue

Silver Spring, MD. 20910

Phone 301-585-2990 FAX 391-585-0668

Writers - news magazines, books, (print media)

Screen Actors Guild

West

Leonard Chassman, Hollywood Exec. Director
7065 Hollywood Blvd.
Hollywood, CA 90028 Phone 213-856-6610

East

John McGuire, Associate National Executive Director
1515 Broadway
New York, NY 10036 Phone 212-827-1474

(Performers (other than musicians) employed in the production of motion pictures, television, video tape, or video disc.

Society of Stage Directors and Choreographers

David S. Rosenak, Executive Secretary
Kathryn Haapala, Deputy Executive Secretary
Patrick Parker, Administrative Services Mgr.
1501 Broadway, St. Floor
New York, NY 20036 Phone 212-391-1070

(Directors and choreographers in the professional musical theater, live theater, and opera directors, however, for opera choreographers refer to AGMA.)

United Scenic Artists

James J. Ryan, Business Rep.
575 8th Ave.
New York, NY 10018 Phone 212-736-4498

(Professional scenic designers, scenic artists, production designers, costume and lighting designers, diorama and display workers, and mural artists employed by television, theater, commercial producers, and motion picture studios.)

Writer's Guild of America

West

Jane Nefeldt, Asst. Exec. Director
8955 Beverly Blvd.
West Hollywood, CA 90048 Phone 213-205-2566

East

Jim Kaye, Asst. Exec. Director
555 West 57th St.
New York, NY 10019 Phone 212-767-7800

(Writers in the field of motion picture, television, and audio-visual programming field.)

Producer's Guild of America

Charles B. Fitz Simons, Exec. Director
400 S. Beverly Drive, Ste. 211
Beverly Hills, CA 90212 Phone 213-557-0807


Formerly Screen Actors Guild (1967) Consultations performed for producers.

b. MANAGEMENT AND SERVICE ORGANIZATIONS WITH SUBSTANTIAL MEMBERSHIP IN THE ARTS, CULTURAL, AND ENTERTAINMENT FIELDS.

 NOTE: These are not labor or union organizations for INS consultation purposes.

Alliance of Motion Picture and Television Producers:

Carol Lombardini
14144 Ventura Blvd.
Sherman Oaks, CA 91423 Phone 818-995-3600

 NOTE: After a call from a petitioner stating that this group no longer performs consultations for producers, a call was made to the above contact, and it was verified that this is true. They indicated that they do consultations for actors, actresses, hairdressers, etc., but NOT producers. The labor organization that does do consultations for producers is the Producer's Guild of America. See the labor organization section above.

Library of Congress

Dr. Alan Jabbour, Director
American Folklife Center
Washington, DC 25040 Phone 202-287-6590

(Folklore, folklife, and ethnomusicology, the study of folk and primitive music and of their relationship to the peoples and cultures to which they belong.)

Opera America

Martin T. Kagan, Executive Director
7770 14th St. NW Ste. 520
Washington, DC 20005 Phone 202-347-9262

(Opera artists and opera support, such as set designers and stage directors)

American Symphony Orchestra League

Toby Holiday, Director
777 14th St. NW, Ste. 500
Washington, DC 20005 Phone 202-628-0099

(Soloists, conductors, musicians, managers, and symphony orchestras.)

Association of Performing Arts Presenters

Susan Farr, Exec. Director

112 16th St. NW #620

Washington, DC 20036 Phone 202-833-2787

(Classical and contemporary theater, classical and contemporary music performed by soloists and small ensembles, modern dance and ballet.)

American Folklore Society

Timothy Lloyd, Secretary-Treasurer

727 East Main St.

Columbus, OH 43205 Phone 614-466-2613

(Folklore, ethnic arts, folk arts, folk craft, folk dance, and music traditions of many cultures)

The Asia Society

Beate Gordon, Director

Performances, Films, and Lectures Dept.

725 Park Ave.

New York, NY 10021 Phone 212-288-6400

(Asian Performers)

Kentucky Center for the Arts

Richard Van Kleeck, Director

Folk Arts

5 Riverfront Plaza

Louisville, KY 10021 Phone 502-562-0100

(Folk Artists)

Institute of International Education

Noreen Tomassi

Associate Program Officer

Arts International Program

809 United Nations Plaza

New York, NY 10017 Phone 212-984-5424

(All artistic disciplines, including the traditional arts)

Harvard University

Hugh Flick, Ass't Professor

Committee on Degrees in Folklore and Anthropology

69 Dunster St.

Cambridge, MA 02138 Phone 617-495-4788

San Diego Foundation for the Performing Arts

Diane Annala, Director

701 B St.

San Diego, CA 92101

Phone 619-234-5855

(Performing artists)

California Arts Council

Director

1901 Broadway, Ste. 530

Sacramento, CA 95818

Phone 916-445-1530

Experts in dance, theater, music, visual arts, video, literature, opera, musical theater, inter-disciplinary arts, folk arts, multi-disciplinary arts, crafts, and architecture.)

Western States Arts Federation

Executive Director

236 Montezuma Ave.

Sante Fe, NM 87501

Phone 505-988-1166

(Performing, visual and literary artists)

c. LABOR ORGANIZATIONS IN THE FIELD OF SPORTS

Harness Horsemen International

Dominick H. Frinzi, Esq.

President

3127 West Wisconsin Ave.

Milwaukee, WI 53208

(Harness drivers)

National Basketball Players Association

15 Columbus Circle

New York, NY 10023

(National Basketball Association)

National Football League Players Association

Thomas J. Depaso, Staff Counsel

2021 L Street, NW

Washington DC 20036 Phone 202-463-2200 FAX 202-857-0380

(Represents NFL players)

d. ORGANIZATIONS IN THE FIELDS OF BUSINESS AND SCIENCE

American Institute of Certified Public Accountants

Joseph F. Moraglio
1455 Pennsylvania Ave. NW
Washington, DC 20004 Phone 202-638-4512

(Certified Public Accountants)

American Institute of Nutrition

Richard G. Allison
9650 Rockville Pike
Bethesda, MD 20814 Phone 301-530-7050

(Nutrition research)

American Psychiatric Association

Carolyn B. Robinowitz
1400 K St. NW
Washington, DC 20005 Phone 202-682-6000

(Psychiatrists)

American Psychological Association

Joan Buchanan
1200 Seventeenth St. NW
Washington, DC 20036 Phone 202-955-7600

(Psychologists)

Institute for Certification of Computer Professionals

George R. Eggert
2200 E. Devon Ave. Ste. 268
Des Plaines, IL 60018 Phone 708-299-4227

(Computer related occupations)

Institute of Management Accountants

James Bulloch
10 Paragon Drive
Montvale, NJ 07645 Phone 201-573-6192


(Accounting and financial management)

The National Trade and Professional Associations of the United States Directory (NTPA) is one of several good reference guides for use in locating the names of applicable labor and management groups along with their addresses and phone numbers.

PLEASE REMEMBER THAT THERE ARE SPECIFIC GUIDELINES REGARDING ACCEPTABLE CONSULTATIONS FOR THE HOCKEY AND BASEBALL PLAYERS. SEE THOSE SECTIONS OF THE PROCESSING HANDBOOK FOR THIS INFORMATION.

LOCAL LABOR ORGANIZATIONS: The INS may accept consultations from local labor organizations but we are requested to forward a copy of that opinion to Central Office Adjudications. The INS, at its discretion, may request an opinion from the national office of the labor organization, if deemed necessary.

IMPORTANT:

 The information in this list of Labor and Management organizations was prepared as a result of material furnished to the NSC by the Headquarters Adjudications Branch and from information furnished to them from the Dept. of Professional Employees, AFL-CIO. The list is also a result of the NSC's contacts with the various organizations. NSC has attempted to provide the most up-to-date information but the names and addresses and jurisdiction of the organizations are subject to change. The information contained here is a guide only. A contact with the labor organization should be made to verify that they are, in fact, the proper entity for use for consultation requests.

Please be aware that there are many more both labor and management organizations which may be used for the consultations required. This list is not intended to be all inclusive but is to give some assistance and guidance regarding the appropriate organizations for some of the fields of endeavor.

Q NONIMMIGRANTS - INTERNATIONAL CULTURAL EXCHANGE VISITOR PROGRAM

This classification encompasses a cultural exchange program to enhance the American people's knowledge and appreciation of different world cultures.

A qualified employer may petition for approval to bring in an alien in Q classification for a period not to exceed fifteen (15) months or for the duration of the program whichever is shorter, to engage in pre-arranged employment or training, and to share his or her own culture with the American people.

It makes no difference whether or not the exchange visitor derives any cultural benefit from the exposure to the American people. The purpose of the cultural exchange program is to provide practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality.

The qualified employer/petitioner must petition for approval of the international cultural exchange program and the international cultural exchange visitor.

The petition is filed, with the appropriate documentation, in duplicate, by the qualified employer on Form I-129, Petition for a Nonimmigrant Worker, with the appropriate fee. The petitioner may include multiple participants on the petition.

A qualified employer/petitioner must submit evidence to fulfill these requirements:

- a. Documentation to establish that an international cultural exchange program exists and is being actively maintained.
- b. The employer must designate a qualified employee as a representative who will be responsible for administering the international cultural exchange program and serve as liaison with the INS. This individual must be employed on a permanent basis, in an executive or managerial capacity for the prior year, as an administrator of the cultural exchange program. This administrator must be a United States citizen or an alien lawfully admitted for permanent residence or an alien provided temporary residence status under Section 210 or 245.
- c. The employer must be currently doing business in the United States. Doing business means the regular, systematic, and continuous provision of goods and/or services by an employer. This provision does not include the mere presence of an agent or office of the qualifying employment.
- d. The employer must offer the alien participants wages and working conditions comparable to local domestic workers.
- e. The employer must demonstrate the financial ability to remunerate the participants.

For program approval of an international cultural exchange program, the employer/petitioner must submit evidence and documentation demonstrating the cultural benefits, which show that:

- a. The culture sharing must be an interaction with the American public and take place in a school, museum, business, or other establishment where the public is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the public does not have direct access do not qualify.
- b. The cultural component must be designed to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the alien's country of nationality. Structured instructional activities, such as courses or lecture series, which have the effect of improving the American public's knowledge about the arts, literature, history, language, or traditions of the Q nonimmigrant alien's country of nationality are deemed acceptable cultural components.

- c. The Q alien's employment or training in the United States may not be independent of the cultural component. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the alien's culture must result from his/her employment or training with the qualified employer in the United States.

The employer/petitioner must submit evidence of these alien participants' requirements and certify that:

- a. Each participant must be at least 18 years old at the time of the filing of the petition. The employer must state the date of birth, country of nationality, level of education, position, title, and a brief job description of each alien.
- b. Each participant is expected to be able to communicate effectively about the cultural attributes of their country of nationality.
- c. Each participant must be qualified to perform the service, labor, or to receive the type of training related to in the petition.
- d. If the alien participant was previously admitted as a Q, they must reside and have been physically present outside the United States the immediate prior year.

In cases where the alien will be engaged in employment or training with the same employer, in more than one location, the petitioner must file an itinerary with the dates and locations of the services, labor, or training. Also if the cultural participant will perform services or labor for, or receive training from more than one employer, each employer must file a separate I-129 petition with the Service Center having jurisdiction over the area where the alien will perform the services, labor, or receive training.

The alien participants may work part-time for multiple employers, provided each has an approved petition for the alien. The alien participants may change employers, however, the new employers must file an I-129 petition. The alien participant may not exceed the 15 month total time allotment.

A qualified employer/petitioner may replace or substitute a participant named on a previously approved petition for the remainder of the program, without filing a new Form I-129. The replacement or substitute may be admitted in Q status until the expiration date of the approved petition. The employer must demonstrate that the substituted participants meet the qualification requirements previously prescribed. To request substitution or replacement, the petitioner must notify, in writing, the consular office at which the alien will apply for a visa or in the case of a visa exempt alien, the port of entry. A copy of the petition's approval notice must be included with the letter. The petitioner must include with the letter, the alien participant's date of birth, country of nationality, level of education, position, title, and certify that the participant is qualified to perform the service, labor, or type of training described in the originally approved petition. The petitioner must also indicate the alien's wages and certify that the alien is being offered prevailing wages and working conditions.

Extensions of stay are filed on the Form I-129; total allowable stay is 15 months. If the petition is filed by the same employer, it should include a copy of the previous petition's approval notice and a letter from the petitioner indicating any terms and conditions of the previous petition that have changed.

The alien classified under section 101(a)(15)(Q) may be employed only by the qualified employer through which the alien attained the status. An alien in this class is not required to apply for an employment authorization document (EAD).

No provision has been made for admission of the spouse or children of a participant in derivative Q status. They may, however, request admission in B-2 visitor status or any classification for which they qualify.

R NONIMMIGRANTS - ALIENS IN RELIGIOUS OCCUPATIONS

Eligible nonimmigrants in the US change their status to R classification by the approval of an I-129 filed for change of status in their behalf. However, no petition is required for initial visa issuance or for initial admission; just apply at the consulate or POE if visa exempt. The I-129 is to be used in changes of status, extensions of stay, and changes of employers for aliens classified in religious occupations.

The regulations are clear concerning the eligible status of aliens within the R classification found in 214.2(r). The alien must have been, for at least the two (2) years immediately preceding the time of application for admission, a member of a religious denomination having a bona fide nonprofit religious organization in the United States and plans to carry on the activities of a religious worker. Only membership is required for eligibility, not experience.

Congress's purpose in creating the R classification was to incorporate into one classification the various prior means of admitting nonimmigrant religious workers. Religious workers and aliens involved in religious occupations no longer need to apply for H-1B or B-1 status.

Religious worker occupation classifications are utilized in three (3) categories:

- a. Professional capacity: Occupations for which a baccalaureate degree or foreign equivalent degree is required.
- b. Religious occupation: An activity relating to a traditional religious function: such as liturgical worker, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.
- c. Religious vocations: A calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, like taking vows. Examples include: nuns, monks, and religious brothers and sisters.

The Act requires the professional worker to be working in a professional capacity in a religious vocation or occupation.

If the job has no religious significance, the fact that a person is a member of a religious denomination working in a facility run by the denomination would not by itself make that person a religious worker. For example, Catholic nurses do not qualify as religious workers simply by working in a Catholic hospital. It must be shown that the work is related to a traditional religious function. Excluded are janitors, clerks, fund raisers, maintenance workers, etc.

Also of note is the fact that a bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in Section 501(c)(3) of the Internal Revenue Code of 1986. In cases where the organization has not sought out this exemption, the organizations may submit the same evidence to the INS. The tax exempt

status of the organization would be judged on the merits of the submitted evidence. In all cases the INS must be satisfied that the organization is, or would be, tax exempt.

Affiliation between the religious worker and the religious denomination, this means an organization which is both closely associated with the religious denomination and exempt from taxation.

The term **minister** means a recognized religious individual authorized to conduct religious worship and to perform other religious duties. There must be a reasonable connection between the activities performed and the religious calling of the minister. This does not apply to lay preachers not authorized to perform the duties of a minister.

Other evidence needed:

- a. A letter from the authorized official of the organization who will be remunerating the alien, indicating the alien's religious membership was maintained while outside the United States and that the foreign and United States religious organization belong to the same religious denominations.
- b. A statement from the authorized official verifying that immediately prior to the application for the nonimmigrant visa or application for admission the alien had the required two years of membership in the religious denomination.

The evidence should also contain the particulars of the remuneration for services to be rendered by the alien, including the amount and source of any salary, which could include housing, food, clothing, and any other benefits to which monetary value may be affixed.

Include any diplomas, degrees, financial statements, certificates of ordination, evidence of vows, etc.

Initial admission for the religious worker, spouse, and children under 21 is for three (3) years. An extension of stay is also done on the new Form I-129 for a maximum period of two years. The total allowable stay in the R classification is five (5) years.

Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

TN NONIMMIGRANTS (NAFTA)

The NSC will adjudicate all required I-129 petitions filed on behalf of an individual seeking classification as a nonimmigrant engaging in activities at a professional level under Section 214(e) of the Immigration and Nationality Act, as amended (Trade Professional) and I-539 filed by their dependents. The classifications include TN-1 for Canadian citizens and TN-2 for Mexican citizens. A dependent spouse or child of a TN nonimmigrant is classified as a TD nonimmigrant.

On December 17, 1992, the Presidents of the United States and Mexico and the Prime Minister of Canada entered into the North American Free Trade Agreement (NAFTA). Implementation of this agreement has been provided for by the NAFTA Implementation Act, Public Law 103-182, which entered into force January 1, 1994. Immigration regulations, in the form of an interim rule were published December 30, 1993 and took effect January 1, 1994. This rule pertains to Canadian and Mexican citizens seeking B-1, E-1, E-2, L-1A, L-1B, and TN nonimmigrant classifications under NAFTA. This section will discuss the TN classification only.

Interim rule, Title 8, Code of Federal Regulations, Part 214.6(l) provides for automatic conversion from TC to TN classification for Canadian citizen professionals in TC classification as of January 1, 1994, as well as automatic conversion from B-2 to TD classification for the spouses and unmarried minor children of such TC nonimmigrants as January 1, 1994. This paragraph also provides that any applications for extension of stay in TC or B-2 classification as the spouse of a TC nonimmigrant which were pending on January 1, 1994 would be treated as if they were for TN or TD classification respectively.

An I-129 petition is required for any initial, extension, change of status, or change of employer petition for a TN-2 beneficiary. A Canadian citizen seeking admission as a TN-1 need not have an I-129 petition filed on his/her behalf. Instead, he/she need only make an application for admission at any Class A Port of Entry, at a U.S. airport handling international traffic, or at a U.S. pre-clearance/pre-flight station. An I-129 petition will be required however, for any extension, change of status, or change of employer petition for a TN-1 beneficiary in the United States.

The spouse and/or children of a TN nonimmigrant seeking admission as a TD nonimmigrant must present a valid unexpired TD nonimmigrant visa unless otherwise exempt under 8 CFR 212.1. Persons normally exempt from nonimmigrant visa requirements include citizens of Canada and residents (Landed Immigrants) of Canada having a common nationality with Canadian citizens (British Commonwealth citizens). If the spouse and/or children of a TN nonimmigrant are in the U.S. seeking an extension or change of status, a separate a Form I-539 must be filed.

The TN-1 classification is very similar to the previous TC classification under the Canadian Free Trade Agreement. One difference is that a TN nonimmigrant may not establish a business or practice in the United States in which he/she will be self-employed. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the United States must seek classification as an E-1 or E-2 nonimmigrant.

Section D of Annex 1603 of the NAFTA permits the United States to establish a numerical limit with respect to professionals from Mexico for a transition period of up to ten years. The annual limit is currently set at 5,500 for such Trade Professionals. Along with the limit, an I-129 petition filed on behalf of a TN-2 must be accompanied by evidence that the employer has filed with the Secretary of Labor Form ETA 9035 for all Appendix 1603.D.1 professionals.

C. Processing Tips for I-130 petitions

1. When filing I-130 petitions for families, prepare each petition as if it were standing alone. **Each petition must be accompanied by its own complete set of documents.** For example, if an individual is filing for several of his siblings, a copy of his birth certificate must be attached to each petition. Submitting petitions without enough copies of all the documents to accompany each petition results in processing delays.
2. The classes of alien relatives eligible are enumerated in sections 201(b) and 203(a)(1), 203(a)(2)(A) & (B), 203(a)(3), and 203(a)(4) of the Act. Section 201(b) covers aliens exempt from numerical limitations and includes "immediate relatives" (aliens who are the spouses, parents, or children of United States citizens). Section 203(a) covers aliens eligible for preferential consideration. Aliens receiving **first preference** are the unmarried sons and daughters of United States citizens. **Second preference** includes the spouses, children, and unmarried sons and daughters of lawful permanent resident aliens; **third preference** includes the married sons and daughters of United States citizens; **fourth preference** includes the brothers and sisters of United States citizens. The INS has the responsibility of determining if the beneficiary of the I-130 is eligible for the classification sought.

3. Review the petition

Review the answer to each question on the petition and determine if the information is relevant and correct. Examples of common problems associated with the execution and filing of petitions are:

- a. Failure to include the requisite fee;
- b. Failure to sign the petition by the petitioner. It should not be signed by the beneficiary;
- c. Reversal of petitioner's and beneficiary's names;
- d. Failure to answer relevant questions;
- e. Use of N/A to answer relevant questions, ("N/A" is generally not considered an acceptable answer). Answer should be "none" if appropriate; and,
- f. Erroneously listing the current date as the birth date for the petitioner or the beneficiary.

4. Fee, Eligibility, Jurat, Jurisdiction

When the petition is received for adjudication, it is first checked to ensure that it is properly filed before considering the merits of the petition. To be properly filed, as stated by 8 CFR 204(d)(1) and (2), the petition is signed by the petitioner, and the correct fee has been received. If the fee has not been paid (or waived pursuant to 8 CFR 103.7(c)) or the petition has not been properly signed, the petition cannot be considered properly filed, and

a formal decision cannot be rendered. If a petition is not signed by the petitioner or is signed by the beneficiary, it is not properly filed. Next, the petitioner's address is checked to determine if NSC has jurisdiction over the case. The petition must be filed in the Service Center having jurisdiction over the place where the petitioner resides.

5. Attorney of Record/Authorized Representative

Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants/petitioners must sign in the original the initial G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.

6. Pay special attention to the following:

Name: The names of the petitioner and the beneficiary are basic in establishing identity and are extremely important when trying to locate any relating INS records. Any substantial variation in the names must be satisfactorily explained by the submission of additional documents, affidavits, or other appropriate means.

Date and Place of Birth: This information is essential as it relates to the identity of the individual and is often necessary to locate any relating INS records.

Additionally, it may determine eligibility for the benefit sought. For example, a petition filed to accord immediate relative classification to a parent or fourth preference classification to a brother or sister requires a review of the petitioner's date of birth because the petitioner must be at least 21 years of age at the time of filing. On petitions for parents, brothers, sisters, children, sons, or daughters, the petitioner's and the beneficiary's dates of birth may have a definite bearing on the claimed relationship. Also, the law governing the place where and when the individual was born must be considered in determining eligibility for many benefits, including visa availability.

Previously Filed Visa Petitions: This information is often necessary to locate any relating INS records that may be relevant.

Addresses: The correct addresses for both the petitioner and the beneficiary are extremely important. The petitioner's address generally establishes which INS office has jurisdiction over the petition. The addresses are also important because the petitioner and the beneficiary may have to be contacted or interviewed. However, even if personal contact is not necessary, the petitioner will have to be notified of the decision on the petition, and the beneficiary will have to be contacted concerning the issuance of an immigrant visa or adjustment of status.

Location of Consulate: The location of the United States Embassy/Consulate where the beneficiary will apply for a visa must be shown on the petition, particularly if the beneficiary will have to apply abroad. If the beneficiary will not seek adjustment in the United States or is ineligible for section 245 benefits, the approved petition is forwarded to The Department of

State, National Visa Center (NVC), 32 Rochester Ave, Portsmouth, NH 03801. The National Visa Center (NVC), at the appropriate time, will forward the petition to the consulate designated by the petitioner on the approved petition.

If the beneficiary is unable to return to the country of birth for visa issuance or if a U.S. consulate is not present in the beneficiary's country of birth, the petitioner may request that another U.S. consulate, which is designated as an immigrant visa processing post, accept jurisdiction on humanitarian grounds. This procedure is requested through the individual consulate or the Department of State.

7. Additional filing instructions: In most cases, the instructions to the Form I-130 petition will be generally sufficient. However, consult 8 CFR 204.2(a)(1) for spouse petition eligibility; and 8 CFR 204.2(a)(1)(i), (ii), and (iii), for the restrictions imposed by IMMACT 90. Focus on:

- a. Marriage within five years of petitioner's obtaining lawful permanent resident status.
- b. Fraudulent marriage provision.
- c. Marriage during proceedings-general prohibition against approval of visa petition.

Listed below are some of the most frequently encountered situations which require information or documentation not covered in the current instructions.

- a. Cases involving legitimation/acknowledgement should be documented pursuant to 8 CFR 204.2(c).
- b. All petitions for stepchildren should include a statement from the petitioner indicating whether their husband or wife has ever been married before and, if they have, include a list of all those prior spouses. Evidence of legal termination of all prior marriages of both the petitioner and his or her spouse must also be submitted, with enough copies to accompany each stepchild petition.
- c. All petitions for siblings who do not share the same mother and father need to include a statement giving full details as to parentage, dates of marriage of parents, and the number of previous marriages of each parent. If the common parent is the father, documentary evidence of the father's marriages and divorces or evidence of a bona fide parent/child relationship between the father and the petitioner and/or beneficiary may also be required.
- d. Birth certificates should include the names of both parents. If the birth was recently registered and the referenced child is not young, historical evidence of relationship will also be required.
- e. In 204(g) cases, please advise us of the date the charging document was filed with the Executive Office of Immigration Review, since that information is not necessarily in the file.

8. Be sure to provide translations for all foreign language documents, and attach each translation to the document to which it relates. Conversely, translations without the foreign language are not sufficient.
9. **204(g) cases:** Section 204(g) of the Act requires that petitions for aliens who marry a USC or LPR while under removal proceedings establish that their marriage was entered into in good faith and that the marriage was not entered into for the purpose of procuring entry as an immigrant. If 204(g) applies, documentation that can establish the marriage is a bona-fide relationship must be submitted. In addition, an explanation enumerating the nature of the immigration proceedings and copies of any relating documentation and/or correspondence from INS are helpful to avoid cases being returned for additional documentation.

D. Processing Tips for I-131 Applications - Reentry Permits/Refugee Travel Documents.

1. Separate I-131 applications must be filed by each applicant. Applications must be typewritten or clearly printed in ink and completed in full.



NOTE: It is recommended that the applicant retain a complete copy of the application for his/her records.

2. **8 CFR 223, Reentry Permits and Refugee Travel Documents**
 - a. The **Reentry Permit** may be issued only to a permanent resident or conditional resident. They are generally valid for two years from the date of issuance. However, a reentry permit issued to a conditional permanent resident shall be valid to the date the conditional permanent resident is valid as indicated on his/her I-551.
 - b. The **Refugee Travel Document** may be issued to an alien in the United States who is in a valid refugee or asylee status, or who obtained permanent residence as a direct result of refugee or asylee status. They are generally valid for one year from the date of issuance.
 - c. The applicant must be in the United States at the time of filing the I-131.

3. **Review the application**

Review your answer to each question on the application and determine if the information is relevant and correct. Examples of common problems associated with the execution and filing of applications are:

- a. Failure to include the requisite fee;
- b. Failure to sign the application;
- c. Failure to list an United States address in Part 1 of the application;

- d. Failure to answer relevant questions;
- e. Use of N/A to answer relevant question, ("N/A" is generally not considered an acceptable answer, often "none" is appropriate instead);

4. Fee, Eligibility, Jurat, Jurisdiction

When the application is received for adjudication, it is first checked to ensure that it is properly filed before considering the merits of the petition. To be properly filed, as stated by 8 CFR 103.2(a)(7)(d)(1) and (2), the application is signed by the applicant, and the correct fee has been received. If the fee has not been paid (or waived pursuant to 8 CFR 103.7(c)) or the application has not been properly signed, the application cannot be considered properly filed, and a formal decision cannot be rendered. If an application is not signed by the applicant it is not properly filed.

5. Attorney of Record/Authorized Representative

Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants must sign in the original the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case

6. Items to be included with each I-131 application:

- a. Two (2) color photos, with light background, of the applicant.
- b. A photocopy of the Permanent Resident Card of the applicant if an Permanent Resident Card has been issued. If a copy cannot be provided explain why photocopy is not available.
- c. If a Permanent Resident Card has not been issued, legible photocopies of all evidence of status must be submitted such as biographic pages of the applicant's passport and the pages which bear the evidence of admission/adjustment or other INS issued evidence.
- d. A legible photocopy of a photo ID. This can include biographical pages from passport, United States Visa, Permanent Resident Card, Driver License, etc. The photocopy must be legible enough to identify the person in the photo ID as the same person whose photos are attached to the I-131 application. If no photo ID is available, please explain.

7. Additional processing criteria

A reentry permit or refugee travel document may not be issue if the applicant has already been issued such a document and it its still valid, unless the prior document is returned to the INS with the application or it is demonstrated that it was lost.

I-131 Advance Parole Applications:

1. NSC can only issue an Advance Parole if there is an I-485 pending at NSC. Separate I-131 applications must be filed by each applicant. Applications must be typewritten or clearly printed in ink and completed in full.



NOTE: It is recommended that the applicant retain a complete copy of the application for his/her records.

2. Review the application

Review your answer to each question on the application and determine if the information is relevant and correct. Examples of common problems associated with the execution and filing of applications are:

- a. Failure to include the requisite fee;
- b. Failure to sign the application;

3. Fee, Eligibility, Jurat

When an application is received for adjudication, it is checked to ensure that it is properly filed before considering the merits of the application. When properly filed, as stated by 8 CFR 103.2(a)(7), the application is signed by the applicant and a correct fee has been received. If the fee has not been paid (or waived pursuant to 8 CFR 103.7(c)) or the application has not been properly signed, the application cannot be considered properly filed, and a formal decision cannot be rendered.

4. Attorney of Record/Authorized Representative

Form G-28 is not acceptable unless signed by the authorized representative and the applicant. Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants must sign in the original the initial Form G-28 submitted with the application. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.

5. Items to be included with each I-131 Advance Parole application:

- a. Two (2) color photos, with light background, of the applicant.
- b. A legible photocopy of a photo ID. This can include biographical pages from passport, United States Visa, Permanent Resident Card, Driver License, etc. The photocopy must be legible enough to identify the person in the photo ID as the same person whose photos are attached to the I-131 application. If no photo ID is available, please explain.

E. Processing Tips for I-140 Petitions

FORM I-140

203(b)(1), 203(b)(2) and 203(b)(3) petitions.

The classifications for employment-based immigrants are:

203(b)(1)(A) - Aliens with extraordinary ability (E11)

203(b)(1)(B) - Outstanding professors and researchers (E12)

203(b)(1)(C) - Certain multinational executives and managers (E13)

203(b)(2) - Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability (E21)

203(b)(3)(A)(i) - Skilled workers (requires at least two years training or experience) (E31)

203(b)(3)(A)(ii) - Professionals with baccalaureate degrees (E32)

203(b)(3)(A)(iii) - Unskilled workers (EW3)

An I-140 is adjudicated on the basis of the classification chosen by the petitioner. If the beneficiary does not qualify for the requested classification, normally NSC will not inform the petitioner of that fact and suggest a different classification; nor will NSC approve the petition for a different classification for which the beneficiary qualifies. Instead, the INS will limit review of the petition to the classification requested on the Form I-140. Generally, only one request for evidence will be sent. In rare instances the INS may issue a denial without a request for evidence. This action will occur only when a determination has been made that a petition as filed results in statutory ineligibility for the requested benefit. In other words, no additional evidence exists to overcome the particular deficiencies of the case.

Prior to the initial review of the petition, the petitioner may request that the classification be changed. Once a request for evidence has been issued concerning the petition, or the petition has been denied, the petitioner cannot request a different classification. Additionally, on appeal a different classification can not be granted. Under each of these examples a new petition with fee will be required to request consideration under a new classification.

The regulations regarding the classifications of aliens with extraordinary ability, outstanding professors and researchers, and aliens of exceptional ability give a list of acceptable evidence and indicate how many kinds of evidence must be submitted. Merely submitting evidence that

meets the required number of criteria may not establish eligibility for the classification. The evidence must demonstrate that the alien is extraordinary, outstanding, or exceptional.

There is no equivalent education and experience allowed for a bachelor's degree or a Ph.D. If a position requires one of those degrees, the worker must possess the actual U.S. degree or foreign equivalent. A bachelor's degree plus five years of progressive experience in the field is considered equivalent to a master's degree. This applies only toward qualification of the beneficiary for an advanced degree position.

Title 8 CFR 204.5(k)(4) says the job offer portion of an individual labor certification, Schedule A, or Pilot Program must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability. A labor certification which in Item 14 shows a requirement of a bachelor's degree in the education block and five years of experience in the experience block is not a labor certification which requires an advanced degree or its equivalent. Only when the education block shows that an advanced degree (master's) or equivalent is required will we find the bachelor's degree holder who has five years of progressive experience qualified. If the labor certification indicates that a master's degree is required without specifying that an equivalent is acceptable, the alien must have the actual degree.

Third and Sixth Preference petitions filed prior to 10/1/91

Any third preference petition filed before October 1, 1991, and approved at any time is deemed to have been approved under section 203(b)(2).

Any sixth preference petition filed before October 1, 1991, and approved at any time is deemed to have been approved under section 203(b)(3). The petition will be classified as skilled, professional, or unskilled (other), based on the information given about the qualifications needed to perform the job.

Classification under section 203(b)(1) requires a new petition. For example, multinational managers and executives are now classified as 203(b)(1)(C). In order to obtain this classification, a worker whose petition was filed under the third or sixth preferences must have a new petition approved in his behalf. The priority date on the new petition will be the same as the original petition except as noted below.

A beneficiary of former third or sixth preference petitions for whom a visa was available continuously from October 1, 1991, to October 1, 1993, and who did not obtain an immigrant visa, adjust status, or have a new petition filed in his/her behalf, lost his/her priority date on October 1, 1993. This includes beneficiaries of former third preference petitions, except those from India, China, or the Philippines, and beneficiaries of former sixth preference petitions that were converted to skilled or professional, except those from India, China, or the Philippines. A new petition to establish a new priority date must be filed.

Adjustment of status

There is no longer a provision for concurrent filing of the Form I-140 and Form I-485, Application for Adjustment of Status. The I-140 must be adjudicated first at the Service Center having jurisdiction over the place of employment. The Form I-140 does not ask specifically if the alien wants to adjust status. If adjustment is requested on the petition or in an accompanying letter, NSC will keep the approved petition pending the filing of the adjustment application, unless the beneficiary is clearly ineligible to adjust. If adjustment is not specifically requested, NSC will forward the petition to The Department of State, National Visa Center (NVC), Portsmouth, NH. The best place to request adjustment is at the bottom of the first page of the form where it asks for the location of the consulate.

Waiver of the job offer in the national interest

A technical amendment to Immact 90 extended the availability of the job offer exemption to professionals with advanced degrees as well as aliens of exceptional ability. It has been clarified that the job offer exemption is actually an exemption from the labor certification requirement. A definition of "national interest" was not included in the regulations in order to leave the determination as flexible as possible.

On August 7, 1998, a precedent decision was published, Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs). This decision defined what is considered in the national interests of the United States. Additionally, the decision provided the outline of a three prong test for use in determining what constitutes "National interest". First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

Ability to pay

The question as to what documentation is required to establish ability to pay comes up frequently. The evidence must establish the ability to pay the wage at the time the priority date is established and continuing until the beneficiary obtains permanent residence. In many cases a large, well established petitioner will have easily obtainable evidence that clearly establishes the ability to pay. Smaller, more marginal enterprises may have more difficulty. Petitioners are not limited to the specific evidence mentioned, nor will officers hold a petitioner to that specific evidence if other appropriate documentation is submitted. But the burden remains on the petitioner to establish the ability to pay the wage offered.

Specifically:

- a. **Publicly traded corporations** - an annual report is sufficient if there is detailed financial information in it.
- b. **Privately held corporations** - a letter from an outside accounting firm (or an inside officer if the company has more than 100 employees) is sufficient if there is detailed financial information in it.

- c. **Partnerships** - The same evidence used for privately held corporations is sufficient.
- d. **Non-profit institutions** - a letter from an inside financial officer is sufficient for large, well established institutions such as universities if there is detailed financial information in it.

The phrase "detailed financial information" means annual revenues and expenditures for the entity (or on the part of larger organizations, the unit) which will be employing the alien. Many entities operate at a loss for a period of time to improve their business position in the long run. The prime example of that would be R&D costs on a product line not expected to generate revenue for several years. In those instances, it is strongly suggested that the sources of funding for the entity (or unit) and the expected profit potential are fully explained in the documentation.

Schedule A

The Department of Labor regulations published on October 23, 1991 retained Schedule A, Group I precertification for physical therapists and nurses. Schedule A, Group II precertification, for aliens of exceptional ability, was also retained. However, precertification under Schedule A, Group III and IV was removed in view of the addition of religious workers to the special immigrant categories and the provisions for certain multinational managers and executives in section 203(b)(1) of the Act.

E13 petitions for certain multinational executives and managers require that the petitioner demonstrate that the beneficiary's foreign employment was in a qualifying capacity. In general, a statement from the petitioner detailing the beneficiary's duties overseas is sufficient. In doubtful cases, a letter from the foreign employer might be required.

F. Processing Tips for Form I-360

The Form I-360 is used to classify an alien as an Amerasian, Widow(er), or as a Special Immigrant (Juvenile, Religious Worker, based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone, Physician, International Organization Employee or family member, Military Service, or Abused Spouse/Child of a LAPR/USC.)

Petitions for Amerasians and Special Immigrant Juveniles must be filed at the local INS office having jurisdiction over the place the alien lives or will live. Petitions for International Organization Employee family members who appear eligible for an adjustment of status should be filed concurrently with an I-485 at the local office.

All Abused Spouse/Child petitions must be filed directly with the Vermont Service Center.

At this time, petitions for widow(er)s, special immigrant religious workers, special immigrant military service personnel, and family members of International Organization Employees who are not eligible for an adjustment of status, are being accepted at our Service Center.

WIDOW(ER)

The petition must be filed within two years of the USC spouse's death, and the beneficiary must not have remarried. The USC spouse must have been a United States citizen at the time of death and must have been legally married to the beneficiary for a minimum of two years. If either the beneficiary or deceased USC spouse was previously married, evidence of legal termination of all prior marriages must be submitted. The death certificate of the USC spouse must be submitted as well as evidence of his/her U.S. citizenship.

SPECIAL IMMIGRANT RELIGIOUS WORKER

The petition may be filed by or for an alien who (either abroad or in the United States) has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States for at least the two years immediately preceding the filing of the petition. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination. **Aliens coming to the United States working for the organization in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization must adjust status or immigrate on or before October 1, 2000. This includes the accompanying spouses and children of such religious workers.** The petition must be supported by the following evidence:

- a. The organization is exempt from taxation in accordance with Section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.
- b. The beneficiary possesses the required two years membership and two years of experience **immediately** prior to the filing of the petition in the religious vocation, professional religious work, or other religious work.
 - 1) If the alien is a minister, evidence must establish that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such duties.
 - 2) If the alien is a religious professional, evidence must establish that the alien has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession.

- 3) If the alien is to work in another religious vocation or occupation, he/she must be qualified in the religious vocation or occupation. Evidence may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother or that the type of work to be done relates to a traditional religious function.
- c. If the alien is to work in a non-ministerial and non-professional capacity for a bona fide religious organization which is affiliated with the religious denomination, the letter from an authorized official must explain how the affiliation exists. A tax exempt certificate indicating the affiliated organization is exempt from taxation in accordance with Section 501(c)(3) of the Internal Revenue is required in this instance.
- d. A letter from an authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration) or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work.

SPECIAL IMMIGRANT STATUS BASED ON MILITARY SERVICE

An alien Armed Forces enlistee or veteran may file the petition for Armed Forces special immigrant status in his or her own behalf. An alien is eligible if he/she served honorably (or is enlisted to serve) in the Armed Forces of the United States for at least 12 years after October 15, 1978. The alien's original lawful enlistment must have been outside the United States, and the alien must be a national of an independent state which maintains a treaty or agreement allowing nationals of the state to enlist in the United States Armed Forces each year.

The alien must submit certified proof of reenlistment or certification of past active duty issued by the authorizing official of the executive department in which the applicant serves or has served. The evidence must establish that the alien served honorably for a period or periods aggregating:

- a. 12 years, and if separated from such service was never separated except under honorable conditions; or
- b. 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status and who has reenlisted to incur a total active duty service obligation of at least 12 years.

The alien must also submit a birth certificate establishing that he/she is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year.

SPECIAL IMMIGRANT INTERNATIONAL ORGANIZATION EMPLOYEES OR FAMILY MEMBERS



If the applicant appears eligible for an adjustment of status, the Form I-360 should be filed concurrently with an I-485, Application for Permanent Residence, at the local INS office.

At this time all petitions for retired officers or employees should have been filed before January 1, 1993, and no later than six months after the date of such retirement.

Family members of an International Organization Employee are eligible to file. Unmarried sons or daughters of a retired employee, a spouse of a retired employee, or a surviving spouse of a deceased employee must submit the following documentation:

A. Unmarried son or daughter

1. Evidence to establish the claimed family relationship,
2. Evidence that while maintaining status as a G or N nonimmigrant the applicant has resided and been physically present in the United States for periods totalling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status at least seven years between the ages of five and 21 years.

Must apply for a visa or adjustment of status no later than twenty-fifth birthday or six months after October 24, 1988, whichever is later.

B. Surviving spouse

1. Evidence to establish the claimed family relationship,
2. Evidence that while maintaining status as a G or N nonimmigrant the applicant has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status and for a period or periods aggregating at least 15 years before the date of the death of the international organization employee.

Must file the petition no later than six months after the death of the international organization employee or six months after October 24, 1988, whichever is later.

C. Spouse

1. Evidence to establish the claimed family relationship,
2. Evidence that the retired officer or employee has been accorded the status of a Special Immigrant International Organizational Employee.

G. Processing Tips for I-485

I-485 Asylum/Refugee

Mailing Address: NEBRASKA SERVICE CENTER
PO BOX 87485
LINCOLN NE 68501-7485

ASYLUM:

Direct mail of I-485 Asylum petitions to the NSC began in July of 1998. The petition adjusts status of asylees to that of permanent resident. Aliens must have been asylees for at least a year prior to filing the I-485.

Each application package should include the following in this order:

- Fingerprint Fee (14 to 75 years of age, inclusive)
- I-485 Filing Fee:
- G-28, if applicable, **signed by the attorney and the applicant**
- I-485, **Signed**
- 2 photos in glassine envelope stapled to lower left corner
- G-325a, **Signed**, (14 years or older) original and at least one copy
- Medical with Vaccination Supplement
- Evidence of Asylee Status
- A clear, readable copy of the letter granting asylum, I-94, etc. If alien was initially given *conditional asylum*, submit evidence to show that the conditions have been lifted.
- I-643, Health and Human Services Statistical Data
- IRS-9003
- I-602, if any
- Evidence of one year physical presence in the United States
- Please keep to an absolute minimum. Evidence might include a letter of employment, a lease, school enrollment records, or similar documentation which would cover broad periods of time.
- Birth Certificate or other birth record with translation, if available.

REFUGEE:

- Fingerprint Fee (14 to 75 years of age, inclusive)
- I-485, **Signed**, no filing fee
- 2 photos in glassine envelope stapled to lower left corner
- G-28, if applicable, **signed by the attorney and the applicant**
- G-325a, **Signed**, (14 years or older) original and at least one copy
- Vaccination Supplement (Complete medical required if found inadmissible at entry or if refugee status was granted to alien in U.S. by an approved I-730)
- Evidence of Refugee Status
- (Clear, readable photocopy of I-94, etc.)
- I-643, Health and Human Services Statistical Data, optional

- IRS-9003, optional
- I-602, if any
- Evidence of one year physical presence in the United States
- Birth Certificate or other birth document with translation, if available.

If filing concurrent Forms I-765 / I-131/ or I-824:

Each of these applications must be complete on its own. They are not always adjudicated with the I-485. Therefore, it each is complete in its own right, the adjudication can be more timely.

Submit a G-28 with each concurrent application, if applicable. Attach 1 photograph to each application (except the I-824) as well as a clear, readable photocopy of an identity document and a clear, readable photocopy of a status document.

Please mail any Asylee/Refugee I-485 as well as any concurrently filed Form I-131(Travel Document) and/or Form I-765 (Employment Authorization) to the above address.

If you wish to later file Form I-131 or Form I-765 on the basis of an I-485 pending at the NSC, mail to the above address. However, if you have been notified that the Form I-485 has been relocated to a local INS office, any subsequent Form I-765, I-131, or I-602 must be submitted to the local office where the I-485 is pending.

A separate I-485 application packet must be prepared for principal applicant and, if applicable, for each dependent spouse/child.

Application packets should be assembled in the order described below. To hold each application packet together please use a single staple or a strong paper clip. (Two inch paper clips seem to work best.)

If one check is submitted to pay for all applications, the check should be attached to the top left hand corner of the first form in the package; if a separate check is submitted for each application, the check should be attached to the top left corner of the corresponding application.

The total fee remittance must be correct for the NSC to accept the I-485 for filing. The NSC has no preference as to whether one check is submitted to pay for multiple forms (e.g. any dependent I-485s, I-131s, I-765s, etc.) or whether a separate check is submitted to pay for each form.

Applicants should be aware that when one check is submitted to pay for multiple forms, all applications must be rejected if the check is not in the correct amount, or if any form has inadvertently been left unsigned.

Several different application packages may be submitted in the same mailing. It is requested, however, that units be identified. For example, rubber band together all applications

pertaining to the ABC family, all applications pertaining to the XYZ family, etc. If submitting unrelated Forms I-765 and I-131 in the same mailing as the I-485 packet(s), please place a note on the front of the unrelated forms stating that they are separate, unrelating filings.

In order for the INS to recognize that an applicant is represented by an attorney or other accredited representative, a properly completed Form G-28, Notice of Appearance as Attorney or Representative, must be filed. **Please include a separate Form G-28 for each I-485, each I-131, each I-765, etc.** All Forms G-28 must be signed by both the attorney/representative and by the applicant. The applicant's signature must be the original signature.

Any foreign language documents must be submitted with a certified English translation. The translator must certify that he/she is competent to perform the translation and that the translation is accurate. Note that translations submitted without a legible copy of the foreign document are not sufficient.

Requested Order of I-485 Asylee/Refugee Materials

1. **Payment Check.** The check should be attached to the top left hand corner of the G-28, if any, or the Form I-485 if no G-28 is submitted. If a separate check is submitted for each application, each check should be fastened to the top left corner of the corresponding application.
2. **Form G-28, Notice of Entry of Appearance as Attorney or Representative,** if any. Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants/petitioners must sign in the original the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.
3. **Form I-485.** If filing as an asylee, box d of Part 2 of the application should be marked. If an Iraqi who processed through Guam, also write "IRAQI/GUAM" in the margin. If filing as a refugee, box h of Part 2 should be marked with the word "refugee" printed on the accompanying line.
4. **Photos.** Two photos for each individual I-485 application should be placed in a clear photograph envelope and attached to the lower left hand corner of the first page of each application. The name of the applicant and A number, if known, should be lightly written in pencil on the back of each photo. If submitting concurrent Forms I-765 and/or I-131, attach one photo to each application in the same manner.
5. **Form G-325A, Biographic Information Sheet.** The form must be signed by the applicant. Submit an original and at least one copy. Submission of a copy facilitates the process of requesting foreign records checks.
6. **Form I-693, Medical Examination of Alien Seeking Adjustment of Status.** Refugees generally need to submit only vaccination "Supplemental Form to I-693" with their

application for adjustment of status, unless there were medical grounds of inadmissibility noted at the time of arrival in the United States. If all that is required is the vaccination supplement, the refugee applicant may have the Supplemental Form completed at any state or local health department, or may choose to make an appointment with a civil surgeon designated by the INS to conduct medical examinations.

Asylee, and refugees for whom there were medical grounds of inadmissibility at the time of arrival, must submit a completed Form I-693, "Medical Examination of Aliens Seeking Adjustment of Status" as well as the vaccination supplement. This requirement also applies to applicants granted refugee status while in the United States based upon an approved Form I-730. Only a civil surgeon designated by the INS to conduct medical examinations may complete the Form I-693 and the vaccination supplement submitted with it.

7. **Evidence of Status.** Submit clear, readable copies of any and all evidence of asylee or refugee status. Documents might include Form I-94; the Asylum Office Letter granting asylum; the Order of the Immigration Judge granting asylum; the Decision of the Board of Immigration Appeals granting asylum; or, for family members, a copy of the approval notice for the Form I-730, Refugee/Asylee Relative Petition. If asylum was granted on a conditional basis, a copy of the letter stating that the conditions on the asylum status were removed at least one year prior to submission of the I-485 must also be submitted.
8. **Form I-643.** This form collects data for the Office of Refugee Resettlement. It will be forwarded to the Department of Health and Human Services.
9. **Form IRS-9003.**
10. **Evidence of one year physical presence in the United States.**
11. **Concurrently filed Forms I-765 and I-131.** If filing Form I-765 for employment authorization and/or Form I-131 for a travel document, please see that each is complete on its own. Attach one photo to the application, a completed G-28 (if any), a readable photocopy of an identification document, and a readable photocopy of a status document. It is important that the facial features be distinguishable on the photocopy of the ID document. Forms I-485 and concurrently filed Forms I-765 and I-131 are data entered at the same time. If Forms I-765 and I-131 are complete, they are then detached from the I-485 package and routed to adjudications. The I-485 goes on for fingerprint and file request processing. If Forms I-765 and I-131 do not have attached photos, IDs, and evidence of status, the I-485 must follow them to adjudications, delaying additional processing of the I-485.

Form I-485 Employment-Based

GENERAL INFORMATION

Please mail employment-based Form I-485 (together with any concurrently filed Form I-131 for Advance Parole, Form I-765, Form I-601 or Form I-212) to the NSC address for I-485s.

If you wish to file Form I-131 for Advance Parole or Form I-765 after the filing of the I-485, they should be sent to the office where the I-485 is currently pending. Therefore if NSC notified you that your Form I-485 had been relocated to a local INS office, then file Form I-131 for Advance Parole and Form I-765 at that local office.

A separate I-485 package should be prepared for the principal applicant and, if applicable, each dependent spouse and/or child.

Application packets should be ordered as indicated below, two-hole punched at the top and held together with "acco" fasteners.

If one check is submitted to pay for all applications, including the \$25 fingerprint fee(s), the check should be stapled to the top left hand corner of the first form in the package; if a separate check is submitted for each application, the check should be stapled to the top left hand corner of each corresponding application.

The total fee remittance must be correct in order for NSC to accept the I-485 for filing. However, the Center has no preference as to whether one check is submitted to pay for multiple forms (eg. any dependent I-485's, I-765's, I-131's, etc.), including the \$25 fingerprint fee(s), or whether a separate check is submitted to pay for each form.

Applicants should be aware that when one check is submitted to pay for multiple forms, if the check amount is not exactly correct or if any form has inadvertently been left unsigned, all applications will be rejected.

In order for the INS to recognize that an applicant is represented by an attorney, a properly completed Form G-28 (Notice of Entry of Appearance as Attorney or Representative) must be filed. A separate Form G-28 should be included for each Form I-485, each Form I-131, etc. Each Form G-28 must be signed by both the applicant and the attorney.

All foreign language documents must be submitted with a certified English translation. The translator must certify that he/she is competent to perform the translation and that the translation is accurate. Note that translations submitted without a legible copy of the foreign language document are not sufficient.

The Form I-693 (Medical Examination of Alien Seeking Adjustment of Status), including the vaccination supplement, must be properly completed and signed by a designated civil surgeon in accordance with "Technical Instructions for Medical Examination of Aliens in the United States" (June, 1991 Centers for Disease Control, Public Health Service), or any subsequently issued instructions. If your local INS office provided you with a list of designated civil surgeons in your area, please submit a copy of that list.

Photograph envelopes should be stapled to the lower left corner of each corresponding application (ie. 2 photos affixed to Form I-485, 2 photos to Form I-131, if filed, etc.).

NSC will review expedite requests for Form I-485 if they involve a dependent child whose twenty-first birthday will occur within six months of filing the application AND the application is filed with at least 60 days until such birthdate. However, NSC cannot process such applications if filed within 60 days of the age-out birthdate.

Expedite requests should be presented to NSC in the normal manner. On the outside envelope write **PLEASE EXPEDITE**. On your cover letter, in which you explain the reason for your expedite request, write **PLEASE EXPEDITE** after the heading of the letter. Please highlight the words **PLEASE EXPEDITE**.

REQUESTED ORDER OF PACKET MATERIALS

1. **Payment Check.** The check should be stapled to top left corner of the G-28, if any, or the Form I-485 if no G-28 is submitted. If a separate check is submitted for each application (including Supplement A to Form I-485), each check should be fastened to the top left corner of the corresponding application.
2. **Form G-28.** Form G-28 is not acceptable unless signed by the authorized representative and the applicant. Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants must sign in the original the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.
3. **Form I-485.** Two photos for each individual application should be placed in a clear photograph envelope and attached to the lower left-hand corner of the first page of each application. The name of the applicant (and "A" number if known) should be written lightly in pencil on the back of each photograph.
4. **Supplement A to Form I-485** (if any).
5. **Any concurrently filed Form I-131 (Advance Parole), Form I-765, Form I-601, Form I-212, Form I-824.** If required by instructions, two photos for each individual application should be placed in a clear photograph envelope and attached to the lower left-hand corner of the first page of the application. The name of the applicant (and "A number" if known) should be written lightly in pencil on the back of each photograph.

A copy of an identity document must be submitted for Form I-131 and Form I-765. This may be a copy of the applicant's passport identity pages, a copy of an expired Form I-688, or a state issued document such as a driver's license or school identity card. The document photo and printed information must be clear and recent enough for comparison with the application photographs and information.

6. **Form G-325A Biographic Information Sheet**

7. **Form I-693 Medical Examination of Alien Seeking Adjustment of Status, including Vaccination Supplement.** The medical examination form, including the Supplement, must be properly completed and signed by the designated civil surgeon. The identity of the physician must be legible in order to allow for confirmation of the physician's authorization to conduct the examination.
8. **Evidence of valid nonimmigrant status.** A legible photocopy of all available evidence of lawful admission and continued maintenance of status should be filed as initial evidence (ie. photocopy of both sides of Form I-94, Form I-20 (if applicable), Form IAP-66 (if applicable, etc.).

A written summary or overview of the applicant's nonimmigrant history with references to specific documents is requested to assist the determination regarding eligibility to file.

A legible photocopy of all pages of the applicant's passport(s) is also requested.

9. **IRS Form 9003 (in duplicate)**
10. **Photocopy of Form I-797 Approval Notice for the underlying employment based petition (Form I-140, Form I-526 or Form I-360 Religious Worker).** A copy of the underlying employment petition is requested.
11. **Birth certificate or other record of birth** The birth certificate is required, unless it is established that a birth certificate is not available, in which case secondary evidence may be accepted. Short forms or extracts that do not establish the applicant's parentage are not acceptable.
12. **Marriage certificate and evidence of termination of any/all previous marriages of applicant and/or dependent spouse (if applicable).** A copy should be provided for the principal alien (if ever married). A copy should also be submitted with the spouse application and for each child application.
13. **Current letter from the petitioner confirming that the terms of employment as specified in the underlying petition continue to exist.**
14. **Cover letter from applicant or representative summarizing the application and itemizing all documents submitted.**

H. Processing Tips for Petition for Immigrant Entrepreneur, Form I-526

Purpose: The purpose of this form is to classify an alien entrepreneur as an immigrant under Section 203(b)(5) of the Immigration and Nationality Act.

As of December 4, 1998, these cases are no longer filed at the NSC. They should be filed with the California Service Center.

I. Processing tips for requests for asylum in the United States, Form I-589, and applications for employment authorization, Form I-765 based on a pending asylum request and Form I-730.

1. Individuals eligible to file asylum requests with Nebraska Service Center

Individuals residing within the jurisdiction of the SAN FRANCISCO and CHICAGO Asylum Offices.

SAN FRANCISCO ASYLUM JURISDICTION: Oregon, Washington, Alaska, Hawaii, Guam, and that portion of California as listed in 8 CFR 100.4(13), and that portion of Nevada under the jurisdiction of the Reno suboffice.

CHICAGO ASYLUM OFFICE JURISDICTION: Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Missouri, Ohio, Iowa, Nebraska, Montana, Idaho, Kentucky.

2. Individuals not eligible to file asylum requests with NSC

a. Individuals in EXCLUSION or DEPORTATION HEARINGS (including any outstanding order to show cause). Applications and materials will be returned to the applicant. Asylum requests must be filed with the Office of the Immigration Judge.

b. Individuals not residing in the jurisdiction of the SAN FRANCISCO and CHICAGO Asylum Offices. Applications and materials will be forwarded to the correct Service Center.

3. Individuals filing Form I-765 who have ALREADY BEEN GRANTED ASYLUM.

Individuals who have already been granted asylum (either by the Asylum Office or the Immigration Judge) must file Form I-765 (both initial and extension requests for employment authorization) with NSC:

U.S. Mail:

**IMMIGRATION & NATURALIZATION SERVICE
NEBRASKA SERVICE CENTER
P.O. BOX 87765
LINCOLN, NE 68501-7765**

Express Packages:

**IMMIGRATION & NATURALIZATION SERVICE
NEBRASKA SERVICE CENTER
850 S STREET
LINCOLN, NE 68508-7765**

4. General processing tips

a. Form I-589 must be completed and **signed**. Unsigned applications cannot be processed.

- b. Applications received without the documentation and photocopies specified in Form I-589 instructions cannot be processed. The required documentation includes:
- **2 recent color photographs** of applicant and each dependent (regardless of age).
 - **Evidence of relationship** to any spouse and children (under 21) included in the asylum request.
 - **3 photocopies** of the original, signed Form I-589. (Additional documentation submitted in support of the asylum request must be submitted in **QUADRUPLICATE**.)
- c. **Initial applications for employment authorization (Form I-765)** may be filed concurrently by the asylum applicant or his/her dependents (in the United States) with Form I-589. Form(s) I-765 must be signed by the person seeking employment authorization (parents may sign Form I-765 in behalf of children under the age of 14). Form I-765 must be accompanied by the Form I-765 card with the signature of the applicant clearly written in the signature block of the card. Unsigned applications cannot be processed.
- d. Photographs must have been taken within the past 30 days. They must be a 3/4 frontal view of the right side of the face, with the right ear visible. The facial image should be about 1 inch from chin to top of hair or head. Applications submitted without photographs or photographs that do not meet specifications or otherwise defective photographs cannot be processed. (Please refer to the detailed photograph specifications page included in this manual.)
- e. Asylum requests that include dependents must include evidence of relationship to the claimed dependent:
- **Spouse:** marriage certificate and evidence of the legal termination of any previous marriage by either spouse (divorce decree, decree of annulment, death certificate).
 - **Children (under 21):** birth certificate that identifies parents. If the applicant is the father, documentation must also include a) evidence that the applicant was married to the dependent's mother, or b) evidence that the applicant has or had a bona fide parent-child relationship with the dependent.
- If the above documents are unavailable or fail to specify the relationship, submit secondary evidence such as church or school records, national identity or travel documents that specify the relationship, census or other civil records, or affidavits of individuals who have personal knowledge of the relationship. However, it is recommended that the applicant attempt to obtain the primary documents.
- f. Applications for work authorization (Form I-765) filed pursuant to a pending Form I-589

- 1) Form I-765 -initial, extension or replacement applications based on a pending asylum application can not be adjudicated if there is not a record of the asylum application in the RAPS computer system (unless it can be established that an asylum application is pending before the Immigration Judge).

When a Form I-765 based on a pending asylum application is received by NSC, and there is no record of the asylum application in RAPS, and there is no evidence that the applicant has an asylum request pending before the Immigration Judge, the applicant will be notified that he/she must file a complete, signed Form I-589, Request for Asylum in the United States, with all required initial evidence. The Form I-589 **MUST** have the applicant's original signature.

The applicant will be granted 33 days to file the Form I-589 with all required initial evidence. Failure to file Form I-589 within 33 days will likely result in the denial of the application for work authorization.

- 2) A Form I-765 requesting **initial** employment authorization for dependents of an asylum applicant who did not previously include them on his/her Form I-589, **Must submit all of the initial evidence specified above and a copy of the asylum applicant's Form I-589.**
 - 3) Forms I-765 by **persons who already been granted asylum** must be filed at the NSC. Forms I-765 by dependent relatives of **persons who have already been granted asylum** must be filed at the NSC.
 - 4) Unsigned applications, and applications without the required evidence, cannot be processed. INS requests for evidence must be answered within the specified time. **Always include the INS letter of instruction when responding to a INS request for evidence.**
- g. **Request to add a dependent to a previously filed Form I-589.** A request must include **all of the initial evidence** specified in form instructions, including evidence of relationship to the principal asylum applicant, and a copy of the principal asylum applicant's Form I-589.
- h. **Persons who have already been granted asylum** (either by the Asylum Office or by the Immigration Judge) seeking asylee status for dependents **outside of the United States** must file **FORM I-730** with NSC. (See section on processing tips for I-730.)

PLEASE REFER TO THE APPROPRIATE SECTION OF THIS MANUAL FOR NON-ASYLUM RELATED FORM I-765 PROCESSING GUIDELINES.

J. Processing Tips For I-730's

Mailing address:

IMMIGRATION AND NATURALIZATION SERVICE
NEBRASKA SERVICE CENTER
PO BOX 87730
LINCOLN NE 68501-7730

Fee: None

Petitioners should file using the latest version of Form I-730, dated 1/7/98. Only one family member can be listed as a beneficiary on the petition, and should be accompanied by a recent photograph of the beneficiary.

Filing eligibility:

Individuals who have been admitted to the United States as a refugee or granted status in the United States as an asylee, within the previous two years and as the principle applicant may file Form I-730. The requirement that Refugee/Asylee Relative Petition be filed within two years of either admission as a refugee or asylum grant does not go into effect until 2/26/00.

A petition may be approved for the following people:

A spouse or unmarried child under twenty-one years of age are eligible for accompanying or following-to-join benefits if the relationship existed and continues to exist prior to the date of admission to the United States as a refugee or grant of asylum status. If the person being filed for is a child who was conceived but not yet born on the date that asylum status was granted or admission to the United States as a refugee, the relationship will be considered to have existed as of those dates.

A petition may not be approved for the following people:

- A spouse or child who has previously been granted refugee/asylee status.
- An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the custody and living with the adoptive parent(s) for at least two years.
- A stepchild, if the marriage that created this relationship took place after the child became 18 years old.
- A husband or wife, if each was not physically present at the marriage ceremony and the marriage was not consummated.
- A husband or wife, if it is determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws.
- A parent, sister, brother, grandparent, nephew, niece, uncle, aunt, cousin, or in-law.

What documents need to be submitted:

- In all cases submit a **legible** photocopy of the petitioner's asylum or refugee status, as well as a recent photograph of the beneficiary.
- If petitioning for a **husband or wife**, submit a copy of the marriage certificate. If the petitioner and/or the spouse were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name change must also be submitted, if applicable.
- If petitioning for a **child**, submit a copy of the child's birth certificate showing both the child's name and the name of the parents. In addition, if petitioning for a child as the natural father, submit a copy of the marriage certificate showing the marriage to the child's mother. If the petitioner was never married to the child's mother, submit evidence that a bona fide parent/child relationship exists or has existed between the petitioner and the child.
- If petitioning for a **stepchild**, submit the child's birth certificate and the marriage certificate between the petitioner and the child's natural parent. Also submit evidence of the termination of any prior marriages. Evidence of any legal name changes must also be submitted, if applicable.
- If petitioning for an **adopted child**, submit a copy of the child's birth certificate and a certified copy of the adoption decree. Also, submit evidence that the petitioner and child resided together for at least two years. If granted legal custody of the child prior to adoption, submit a certified copy of the court order granting custody. Evidence of any legal name changes must also be submitted, if applicable.

K. Processing Tips for I-751's

1. The I-751 requires copies of as many documents as the individual wishes to establish the marriage was entered into in "good faith". Failure to submit documentary evidence along with the application delays the final processing of the case and increases the probability that the case will go to interview at a local INS office.
2. If affidavits are submitted as part of the I-751 and the case is scheduled for interview, the regulations require that the affiants be present at the interview.
3. If any children entered the United States in conditional status as a result of a marriage, be sure to list these children on the principal alien's Form I-751. Also, please include the A file numbers of all the children.

L. Processing Tips For I-765 Applications

1. Separate I-765 applications must be filed by each applicant. Applications must be typewritten or clearly printed in ink and completed in full.



NOTE: It is recommended that the applicant retain a complete copy of the application for his/her records.

2. The classes of nonimmigrant aliens eligible for work authorization are enumerated at 8 CFR 274a.12. The general instructions for filing an application for employment authorization, Form I-765, are located at 8 CFR 274a.13.

- a. Filing of the Application. Certain aliens temporarily in the United States are eligible for employment authorization. Please refer to the **ELIGIBILITY SECTION** of the Form I-765. Carefully review the classes of aliens described in Group A and Group C to determine the eligibility of the applicant.



NOTE: This application should not be filed by lawful permanent resident aliens or by lawful temporary resident aliens.

- b. There is a fee. Applicants must pay the fee unless otherwise noted on the reverse of the form.
- c. Where to file the application

LOCAL FILINGS.

Applications must be filed with the nearest INS office that processes employment authorization applications which has jurisdiction over the applicant's place of residence. The applicant, in most cases, must appear in person to receive an employment authorization document. Applicants must bring INS form I-94 and any other document issued by the INS granting employment authorization.

SERVICE CENTER FILINGS

Only the classes listed in Appendix C will be processed at the NSC. All others received will be returned to the applicant/representative or denied. They should be mailed to:

NEBRASKA SERVICE CENTER
P.O. BOX 87765
LINCOLN, NE 68501-7765

3. **REVIEW THE APPLICATION.** Review the answer to each question on the application and determine if the information is relevant and correct. Examples of common problems associated with the execution and filing of applications are:
- a. Failure to include the requisite fee;
 - b. Failure to sign the application;
 - c. Failure to check the correct class, initial (first card), extension or replacement. Check one only. Failure to answer all items.
 - d. Use of N/A to answer relevant questions, ("N/A" is generally not considered an acceptable answer, NONE often is the acceptable answer).
 - e. Failure to submit the proper ADIT-STYLE color photos; all I-765 applications must have ADIT-STYLE photos - initial requests, extensions and replacements.
 - f. Failure to submit a copy of the previously issued I-688B, or submitting a copy where the photograph and card data are not clearly shown.
 - g. Failure to submit a I-797, approval notice that the alien has been granted benefits under the Family Unity Program, or, a letter granting voluntary departure under that program.
 - h. Failure to submit evidence that the applicant continues to pursue an asylum application before the Board of Immigration Appeals or Federal Court after the asylum application has been denied.
 - i. Failure to submit evidence that the applicant's asylum case has been reopened after the case had been administratively closed. This must be done at the office that closed the case.
 - j. Failure to file Form I-589 when applicant claims previous filing but diligent search of INS records reveals no record of his filing Form I-589, Application for Asylum, with this INS.
 - k. Failure to follow instructions as to where to file the application, such as the filing of an application with the Service Centers while under proceedings. **These must be filed at the Local Office.** (See above list of only cases accepted at NSC).
4. **FEE, ELIGIBILITY, JURAT, JURISDICTION.** NSC checks to ensure that it is properly filed before considering the merits of the application. To be properly filed, the application is signed by the applicant and a correct fee has been received. If the fee has not been paid (or waived pursuant to 8 CFR 103.7(c)), or the application has not been properly signed, the application cannot be considered properly filed and a formal decision cannot be rendered. **If an application is not signed it is not properly filed.** Next, the applicant's address is checked to determine if NSC has jurisdiction over the case. (only those asylum applicants living in the San Francisco or Chicago asylum office jurisdictions should file I-765s at the NSC) See asylum section.

- a. Form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants/petitioners must sign in the original the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original which should be already attached to the relating case.

(EAD's approved for an extension are sent **directly** to the **applicant** with a notice going to the attorney.)

- b. **OTHERS NOT ACCEPTED.** The following applicants must appear in person with their documentation at the Local Office for I-765 processing.
 - 1) Temporary Protective Status (TPS) cases (**except TPS for Honduras and Nicaragua are filed at NSC**);
 - 2) Any applicant that is under removal proceedings;
 - 3) Those where an Immigration Judge has administratively closed proceedings to allow the alien to apply for TPS or other benefits, other than asylum.

M. Processing Tips for I-817's

1. The Family Unity program was created by section 301 of the Immigration Act of 1990. An application for voluntary departure under the Family Unity Program lies exclusively within the jurisdiction of the Service Center Directors.
2. Documents to be submitted are Form I-817, fee, and the initial evidence required on the application form.
3. An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she:
 - a. Entered the United States on or before May 5, 1988, and has resided continuously in the United States since that date;
 - b. On May 5, 1988, he or she was the spouse or unmarried child of a legalized alien, and he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Immigration and Nationality Act based on the same relationship.
 - c. If the alien through whom the applicant is claiming benefits filed for legalization status after May 5, 1988, but before the expiration of legalization benefits, then the applicant's I-817 will be denied but will be given the 2 years of voluntary departure if otherwise eligible.

4. Examples of documents which may help to prove continuous residence include past employment records, utility bills; school; hospital or medical records; attestations by organizations; dated money order receipts; birth certificates of children born in the United States; dated bank books; signed deposit slips and canceled checks; dated mail; automobile license, title, and vehicle registration; deeds; contracts; tax receipts; insurance policies; and W-2 forms showing earnings; affidavits by two persons who know of the residence in the United States for the required period.
5. Evidence to establish relationship corresponds to that which is acceptable for second preference family based immigrants.

N. Processing Tips for Application for Action on an Approved Application or Petition Form I-824

Purpose:

The purpose of this form is to allow an applicant or a petitioner to request additional action (see below) on their approved application or petition. This form should not be used to amend the application or petition nor should it be used to correct or change the original approval.

Who may file:

An applicant or a petitioner who filed an application or petition which has been approved (or will be approved) may file Form I-824 during the validity period of the approved application or petition. They may use Form I-824 to request a duplicate approval notice, request that another consulate be notified of the approval of the petition, or request that a U.S. Consulate be notified that their status has been adjusted to permanent resident so their spouse and child(ren) can apply for immigrant visas. **Please note**, the beneficiary or petitioner of an approved petition (I-130/I-140) can file and sign Form I-824 when requesting a change in the consular post or when seeking a change of processing from adjustment of status at an INS office to consular processing abroad. Additionally, the beneficiary or petitioner of an approved I-129 petition can file and sign Form I-824 when requesting a change in the consular post.

Where To File Application:

The jurisdiction for filing Form I-824 lies with the office which approved the original application or petition. Therefore, the Service Centers will **only** handle cases involving duplicate approval notices, cases involving requests to notify another consulate and certain cases involving notification to the Consulate that an applicant's status has been adjusted to permanent resident approved at the NSC. All others should be filed with the INS office which approved the adjustment.

Fee:

A fee must be paid for filing the application. It cannot be refunded regardless of the action taken on the application.

Duplicate Approval Notices:

This block on Form I-824 should only be used when requesting a duplicate approval notice. Do not use this form to request an amended approval notice. For example, if an approval notice on an I-140 was received which listed an incorrect priority date, write a letter to NSC and request that an amended approval notice be issued with the correct priority date.

Notification of a New Consulate or Port of Entry:

This block on Form I-824 should be used when requesting a new consulate be notified. Some examples for this block are:

- a) When Form I-129 was approved for classification and change or extension of the beneficiary's status but the petitioner would also like to have the consulate abroad notified that the beneficiary has been granted a change or extension of his/her nonimmigrant status.
- b) When the beneficiary of an I-130/I-140 wishes to apply for a visa instead of adjusting to a permanent resident in the United States; and
- c) When the applicant/petitioner wishes to have another consulate notified other than the one to which the petition was originally sent.

An I-824 cannot be used when an I-129 for multiple beneficiaries was filed and the beneficiaries will be applying for their visas at different consulates or will be applying for admission at different ports of entry. In this case, separate petitions must be filed.

O. Processing Tips for Form I-829, Petition by Entrepreneur to Remove Conditions

As of December 4, 1998, the Form I-829 is no longer filed at the NSC. I-829's should be filed with the California Service Center.

Alien Entrepreneurs are given lawful permanent residence on a conditional basis for a two-year period. During the 90-day period before the second anniversary of the alien's obtaining conditional permanent resident status the conditional resident must for removal of conditions. The petition may include the alien's spouse and children, even if the children marry or reach the age of 21 during the period of conditional residence. The final rule also allows the spouse and children of a deceased principal alien to file an I-829 and have the conditions removed, if it can be shown that the requirements for removal have been met despite the death of the alien entrepreneur. Additionally, a former spouse, who was divorced from the principal alien during the period of conditional residence, may be included in the principal alien's I-829 or may file a separate petition.

P. Processing Tips for N-400

Purpose

This form is used by people who want to apply to become naturalized citizens of the United States of America. Applicants must meet certain eligibility requirements.

Who May File

An applicant must be 18 years or older in order to file Form N-400 AND be one of the following:

- A person who has been a Lawful Permanent Resident for at least 5 years, or
- A person who has been a Lawful Permanent Resident for 3 or more years AND who is married to a United States Citizen AND who has been married to and living with the same US citizen spouse for the past 3 years or more AND that US citizen spouse has been a US citizen for the past 3 years or more, or
- An applicant who is a Lawful Permanent Resident who has served in the U.S. Armed Forces for at least 3 years AND is still serving in the U.S. Armed Forces OR will be filing the Form N-400 within 6 months of honorable discharge from the military service.
- There are several other small groups of people who are eligible for naturalization and who should use the Form N-400 (for example, individuals who served in the U.S. Armed Forces during certain periods of hostility). For additional information, please read the brochure *A Guide to Naturalization* (see section "Additional Information Resources" below).

Fee

The base fee for the Form N-400 must be submitted. Further, there is also a fingerprint fee for certain applications as detailed below:

- If the applicant is 75 years or older when the Form N-400 is filed, no fingerprint fee is required.
- If the applicant is filing the Form N-400 overseas, no fingerprint fee is required (see Fingerprint section below).
- For all other applications, the fingerprint fee is required.

Fee must be paid with a check or money order drawn on a U.S. bank payable to the "Immigration and Naturalization Service."

The fee must be sent with the Form N-400. The fee is not refundable even if the applicant withdraws the application or if the application is denied.

Where To File Application

The application must be submitted by mail to the Service Center having jurisdiction over the area in which the applicant resides.

The NSC has jurisdiction over the states of: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

Applications being filed at the NSC should be mailed to:

US IMMIGRATION & NATURALIZATION SERVICE
NEBRASKA SERVICE CENTER
PO BOX 7400
LINCOLN NE 68501-7400

Applicants who are overseas may file an N-400 application with the Service Center that serves the INS office where that applicant wants to be interviewed. For example, if an applicant is overseas and wants to be interviewed in the Chicago INS office, then the applicant should send the N-400 application to the NSC.

When to File the Application

Applicants may file for naturalization up to 3 months before meeting the "continuous residence" requirement. For example, if the applicant is applying based on 5 years of "continuous residence" as a Lawful Permanent Resident, the applicant may apply when s/he has been a Lawful Permanent Resident in "continuous residence" for 4 years and 9 months.

However, all other eligibility requirements must be met at the time of filing the application (the applicant must be 18 when the application is filed, etc.)

Documents to Submit

All applicants must send:

- a completed Form N-400 with an original signature;
- the correct fee;
- a photocopy of both sides of their Permanent Resident Card ("green card");
- two color photographs taken on a white background with a 3/4 frontal image.

If the applicant has ever been in the U.S. military service, then an original Form N-426, "Request for Certification of Military or Naval Service" AND an original Form G-325B, "Biographic Information." (a yellow form) must be submitted.

Depending on the applicant's basis for filing the Form N-400, other documentation may be required. For example, if the applicant is filing based on 3 years of marriage to a United States citizen, then the applicant should submit proof that his/her spouse is a United States citizen, a current marriage certificate, and proof of termination of all of the applicant's prior marriages and all of the applicant's spouse's prior marriages. For additional documentary information, please refer to *A Guide to Naturalization* (see section "Additional Information Resources" below).

Fingerprints

Once the N-400 application is properly filed, the applicant will receive a fingerprint appointment notice from INS telling her/him where and when to have her/his fingerprints taken. The applicant must take the fingerprint appointment notice and his/her Permanent Resident Card in order to get fingerprinted.

Applicants who are 75 years of age or older at the time of filing the Form N-400 do not have to be fingerprinted. Applicants who file their applications from overseas must submit fingerprints with their applications. Military offices abroad and U.S. Consular officers abroad are authorized to take prints for applicants who file their Form N-400 from overseas.

Once fingerprints are processed by the FBI, they are valid for 15 months. If processing of the application, including the oath ceremony, takes longer than the 15 months, then the applicant will need to be reprinted (at no cost to the applicant).

The length of time for an applicant to receive a fingerprint appointment after the application has been filed varies, due to fingerprinting capacities and interviewing capacities of the local INS office.

Interview

After the fingerprints are taken, the applicant must wait for INS to schedule her/his interview. The applicant will receive a notice in the mail telling him/her when and where to appear for the interview. The applicant will take the English and civics test and answer questions about their application and background.

Time Frame

The time it takes to be naturalized varies from one local office to another. INS is currently modernizing and improving the naturalization process in order to decrease the amount of time it takes to process an application.

Expedite Requests

Requests for expediting a Form N-400 must be approved by the local INS office where the applicant will be interviewed. If the local INS office agrees to expedite a case, that office will contact the NSC and the two offices will coordinate to expedite the case processing.

Address Changes

An address change for a Form N-400 filed at the NSC should be mailed to the same address to which the application was mailed (see section "Where to File the Application" above). Address changes must include the name, INS Alien Registration Number (A#), Application Number of the case (LIN*00000004), the old address, the new address, and the effective date of the new address.

Miscellaneous Information

The NSC processes the Form N-400 to get it ready for interview at the local INS office. This includes processing of the applicant's fingerprints and background checks and obtaining the applicant's INS administrative file. If more information or documentation is needed, the applicant will be sent a letter explaining what is needed and where to send it.

The NSC does not conduct naturalization interviews.

Starting in January 1998, Form N-400s began to be processed via new computer software at the NSC. The receipt notices contain Application Numbers that are case-specific to the N-400 that is filed. Form N-400 that are filed at the NSC receive Application Numbers that start with "LIN*" and then contain 9 digits. Example: LIN*123456789, LIN*000001234.

In addition to the Application Number, fees are franked with an identification number called a Pay Identification Number. Forms N-400 filed at the NSC receive Pay Identification Numbers that start with "LIN\$" and then contain 9 digits. Example: LIN\$123456789, LIN\$000001234. The Pay Identification Number is completely different from the Application Number. Example: a case with Application Number LIN*000000123 may have had a check

franked with Pay Identification Number LIN\$0000000321. However, the NSC is able to track your case using either number.

Additional Information Resources

For additional information, please *A Guide to Naturalization*, Form M-476, a brochure created by INS to provide better and more consistent information regarding the naturalization process. You may obtain this brochure by calling 1-800-870-3676.

The INS has an Internet web site that contains additional information about the naturalization process. The internet address is:

www.ins.usdoj.gov

Your local INS office will also be able to assist you.

N-400 under Section 405: Filipino WW II War Veterans

The NSC accepted Form N-400, Applications for Naturalization, for Philippine World War II participants under section 405 of the Immigration and Nationality Act of 1990. In order to be eligible under the provisions provided in Section 405, the application had to be filed between November 29, 1990 through and including February 2, 1995.

Therefore, while no new applications have been filed under Section 405 since February 3, 1995, the NSC continues to process the applications that were filed and prepares those cases to be interviewed at the appropriate office (the NSC does not conduct the interviews). Part of the processing includes military records checks for each applicant who filed within the correct filing dates.

The INS conducted interviews in the Philippines from May through September of 1998. Currently, the INS is preparing to conduct additional interviews in the Philippines in 1999. The authority of the INS to conduct interviews and oath ceremonies in the Philippines for applications filed under Section 405 expires on February 3, 2001.

Q. Processing Tips for Legalization Applications

1. Submissions should be placed in the following order to prevent delays in processing: (From top to bottom)
 - a. Fee if required.
 - b. If case is being resubmitted, any center notices, if applicable.
 - c. Form G-28, if applicable.
 - d. Application.
 - e. Brief, if applicable.
 - f. Evidence/attachments.

2. Please ensure that the application is properly completed.
3. Submit a cover letter with each submission which includes the following:
 - a. What benefit is being sought.
 - b. Why the beneficiary is entitled to the benefit.
 - c. A list of attachments, if any.
 - d. The "A" number and attorney I.D., if applicable.
4. Submit translations for all foreign language documents. The translator must certify that she/he is competent to translate and that the translation is accurate.
5. Use an ACCO type fastener to hold together thick or bulky submissions. The use of tabs may assist in locating items listed as attachments. The tabs should be placed on the bottom and not the side for ease in filing.
6. Avoid using paper larger than 8 1/2 x 11 inches. Where documents are larger, please fold them in a manner where they can be placed in an 8 1/2 x 11 inch file.
7. Supporting documents for SAW applications should show the same formatted information as contained on Form I-705 (i.e., man hours worked, name of employer, dates of employment and periods of employment).

I-690 Waivers

Only waivers relating to applicants with a legalization application at the NSC should be filed at the NSC. All information requested on the form should be provided, especially the section of law the waiver seeks to overcome, the "A" number and the basis of the eligibility. Where a fee is required, the instrument of payment must be as specified in section 245A and 210 of the regulations.

There are no waivers available for excludability under section 212(a)(2)(A),(B) or (C), or under 212(a)(3)(A),(B),(D), or (E) of the INA. Under the family fairness program no waivers are available.

I-694 APPEALS

All legalization appeals must be filed at the NSC for NSC denials. They must be accompanied by the appropriate fee.

The appeal must be filed within 33 days of the denial or termination notice. There is no extension to this time frame; however, any questions as to timeliness will be addressed by the Legalization Appeals Unit. Upon request, briefs may be submitted up to 30 days after the appeal is filed or a FOIA response is provided.

Certified decisions allow for 30 days to submit a brief.

There are no provisions to submit a motion to reopen or reconsider a legalization denial or termination; however, the director of the appeals unit and the center director may sua sponte reopen any adverse decision issued under their jurisdiction.

All decisions where an applicant has tested positive for the HIV virus will be certified to the Legalization Appeals Unit.

R. Processing Tips for Waivers

FORM I-212

A statement by the applicant must be submitted with every application. It should include statements indicating:

1. the reason the waiver should be granted.
2. disclosure of all entrances and departures of the applicant.
3. a list of names and dates of birth that have been used by the applicant at any time in the United States.
4. dates and places of employment and whether it was authorized by INS while residing in the U.S.

With the application submit:

1. Copies of any and all INS correspondence concerning the removal to a country outside the United States at the expense of the United States Government. Include any evidence the applicant has been before an Immigration Judge and/or has received a final order of deportation/removal.
2. Evidence of the claimed relationships that are in the U.S. such as birth or marriage certificates, approval notices of immigrant visa petitions, etc.
3. If arrested or convicted of any law violation, submit evidence of the arrest and final disposition. Include translations for foreign documents.
4. If the applicant departed the U.S., submit evidence of such departure and historical evidence applicant has remained physically outside the U.S. since the departure.
5. If the applicant claims unusual hardship, such as illness of a relative, submit a statement from the attending physician describing in detail the diagnosis, prognosis, history, treatment and need for the applicant (other than moral support).

FORM I-612

Section 212(e) of the Immigration and Nationality Act requires certain J-1 exchange aliens and their J family members to reside for a minimum of two years in the country of their nationality or last foreign residence before they become eligible to apply for permanent residence, an H or

L nonimmigrant visa or for a change of nonimmigrant status. An alien may request a waiver of this two year foreign residence requirement by filing a Form I-612. The waiver must be accompanied by evidence that compliance with the residence requirement would impose exceptional hardship on the applicant's United States citizen or lawful permanent resident spouse or child or subject the applicant to persecution on account of race, religion, or political opinion.

In cases based upon exceptional hardship claims, a statement must be submitted from the applicant that specifies how the applicant's compliance with the foreign residence requirement would impose exceptional hardship on the U.S. citizen or lawful permanent resident spouse or child if he/she accompanied the J-1 (the applicant) abroad and if he/she chooses to remain behind in the United States while the J-1 was away for the 2 years. Documentation to support this claim must be included.

Applicant must submit evidence of the claimed relationship(s) and evidence that the spouse and/or child is a United States citizen or lawful permanent resident.

An application based upon a claim that return to the country of nationality or last foreign residence would subject the applicant to persecution on account of race, religion, or political opinion must include a detailed statement of the basis for the applicant's belief that he/she would be persecuted. Documentation to support this claim must be included.

A Form I-612 may not be approved without a favorable recommendation from United States Information Agency (USIA).

S. Processing Tips for Appeals and Motions

1. Requests for extensions to file an appeal may not be granted. A request for extension to file a brief may be requested once the appeal or motion has been filed.
2. If a denial has been overcome on appeal, the case will be treated as a motion and approved, without forwarding the case to the Administrative Appeals Unit, the Legalization Appeals Unit or the Board of Immigration Appeals.
3. If an appeal is filed to the Commissioner (on form I-290B) and an extension to file a brief is requested, the decision to grant or deny the brief extension is made by the Administrative Appeals Unit and not the Service Center.
4. A motion to reopen a case denied due to abandonment may be filed if one of the following is demonstrated:
 - a. The requested evidence was not material to the issue of eligibility,
 - b. The required evidence was submitted with the application or petition or the request for evidence was complied with during the time allowed, or

- c. The request for evidence was sent to an incorrect address or the INS was notified of a change of address before the request was sent.
5. As with appeals, any motion to reopen or reconsider must now be filed within 30 days of the date of the denial.

NONIMMIGRANT EMPLOYMENT CLASSIFICATIONS

Nonimmigrant Categories and definitions (8 CFR section 214.2) FORM I-129	Department of Labor Requirements	Consultation Requirements	Immact 90 changes and other issues
H-1B SPECIALITY OCCUPATION OR DOD COOPERATIVE RESEARCH or FASHION MODELS of DISTINGUISHED MERIT and ABILITY -- 65,000 cap 6 or 10 year limit on stay	certification on DOL form ETA 9035 for all but DOD	n/a	removed artists, athletes, entertainers - see O&P
H-2A AGRICULTURAL WORKERS 3 year limit on stay. Employment is seasonal and temporary	temporary labor certification	n/a	no changes
H-2B TEMPORARY NONAGRICULTURAL WORKER -- 3 year limit on stay. Employment is temporary (one-time occurrence, peak load need, seasonal need, intermittent need) 66,000 cap	temporary labor certification ETA 750A&B	n/a	no major changes
H-3 TRAINEE - 2 year limit - training unavailable in home country - no productive employment - needs a structured training program - no cap	none	n/a	special ed training program added
L-1 INTRACOMPANY TRANSFEREE - 5/7 year limit - no cap - 1 year out of 3 prior employment as manager, executive or specialized knowledge capacity	none	n/a	definitions broadened - certain accounting firms qualify
O-1 EXTRAORDINARY ABILITY in Science, Arts, Ed., Bus., or Athletics or EXTRAORDINARY ACHIEVEMENT in MOTION PICTURES or TV	none	peer group or management and labor	filed for single alien
O-2 ACCOMPANYING ALIEN(s) to an O-1 of extraordinary ability or extraordinary achievement	none	labor or management and labor	highly skilled essential prior experience
P-1 Internationally recognized ENTERTAINMENT GROUP, INDIVIDUAL ATHLETE or ATHLETIC GROUP	none	labor organization consultation	group est. for one year
P-2 ALIEN ARTIST(s) OR ENTERTAINER(s) ENTERING UNDER A RECIPROCAL EXCHANGE AGREEMENT	none	labor organization consultation	need copy of reciprocal exc. agreement
P-3 ALIEN ARTIST(s) OR ENTERTAINER(s) ENTERING UNDER A PROGRAM THAT IS CULTURALLY UNIQUE	none	labor organization consultation	sponsored by educ., cult., or govt agency
Q ALIEN PARTICIPATING IN AN INTERNATIONAL CULTURAL EXCHANGE PROGRAM	none	n/a	evaluation of program
R-1 ALIENS IN RELIGIOUS OCCUPATIONS (two year membership in religious denomination coming to perform religious work)	none	n/a	ministers - religious professionals and vocations

Appendix A

EMPLOYMENT BASED IMMIGRANT CLASSIFICATIONS

Priority Workers Section 203(b) (1)	Class Form	PRE-IMM 90	SPECIAL CONCERNS
ALIENS WITH EXTRAORDINARY ABILITY - in sciences, arts, education, business, athletics - sustained nat'l/int'l acclaim - recognized achievements	E11 I-140	3rd pref, possible Sched. A Group II	No LaborCert, no job offer, comint to continue work
OUTSTANDING PROFESSORS AND RESEARCHERS outstanding int'l recognition in field three years teaching/research experience tenure track position or research	E12 I-140	3rd pref. Ind. Labor certification	Needs a job offer - filed by employer No Labor Certification
MULTINATIONAL EXECUTIVES AND MANAGERS in 3 yrs prior to application had at least 1 yr employment with affiliated company as manager or executive	E13 I-140	3rd or 6th pref. Sched A, Group IV	No Labor Cert. inor changes from Sched. A, Group IV
<u>Members of the professions with advanced degrees or aliens of exceptional ability</u> (job must require advanced degree or exceptional ability) Section 203(b) (2)	E21 I-140	3rd Pref. Individual labor certification	Needs Labor Certification job offer - may be waived if in the national interest
<u>Skilled Workers, Professionals, and Other Workers</u> -- Section 203 (b) (3)			
SKILLED WORKERS - requiring at lease two years training or experience (or education)	E31 I-140	6th Preference	Needs labor certification and job offer
PROFESSIONALS - who hold a bachelor's degree and who are members of the professions - job must require degree	E32 I-140	3rd Pref. Ind. Labor Certification Sched. A, Group I	Needs Labor Certification and job offer
OTHER WORKERS - less than two years experience or training required	EW3 I-140	6th Pref. Ind. Labor Certification Sheep Herders	Needs Labor Certification and job offer
<u>Certain Special Immigrants - Section 203 (b) (3)</u>			
RELIGIOUS WORKERS - ministers, religious professionals and other religious vocations	SD1 SR1 I-360	3rd and 6th Preference Sched A, Group III Special Immigrant	2 yrs membership and 2 years experience
<u>Employment Creation - Section 203 (b) (5)</u>			
INVESTORS - invested \$1 million - create ten jobs - conditional two year status	T51 C51 I-526	N/A	No Labor Certification Needed

CLASSES OF I-765S PROCESSED AT NSC
(revised 01-21-99)

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>PERIOD</u>
(a) (3)	Admitted as a Refugee	one year
(a) (4)	Paroled as Refugee	one year
(a) (5)	Asylum Granted	one year
(a) (6)	Fiance(e)	remainder of 90 day entry
(a) (7)	N8/N9 parent child special immigrant	one year
(a) (8)	Micronesia/Marshall Islands citizens	one year
(a) (11)	EVD/DED Granted	Remainder of VD or 1 year whichever is lesser
(a) (13)	family unity granted	period of VD grant
(c) (1)	A-1/A-2 Dependent	one year
(c) (2)	dependent of E-1 employee of Coordination Council of N.A. affairs	one year
(c) (3) (i)	F-1 - Practical Training	max one year
(c) (3) (ii)	F-1 - International Org.	max one year
(c) (3) (iii)	F-1 - Economic Necessity	max one year
(c) (4)	G-1/G-4 Dependent	one year
(c) (5)	J-2 Nonimmigrant	one year
(c) (6)	M-1 Practical Training	max of 6 months
(c) (7)	dependent of NATO1 thru NATO7	one year
(c) (8) *	asylum pending	one year
(c) (9)	pending I-485 filed at NSC and the case has not been relocated to the field for processing	one year
(c) (12)	Family Unity denied - I-817 denied because the principle filed for legalization after 5/1/88	Period of VD grant
(c) (17) (1)	B-1 domestic servant of non-immigrant employer	grant
(c) (17) (2)	B-1 domestic servant of U.S. Citizen employer	one year
(c) (17) (3)	B-1 airline employee	one year
(c) (19)	TPS for Honduras and Nicaragua	until 7/5/00

* We also accept initial I-765s filed concurrently with I-589 Application for Asylum.

All other I-765's must be filed in person at the local INS office.

APPENDIX C