

PART 214—NONIMMIGRANT CLASSES

§ 214.1 Requirements for admission, extension, and maintenance of status.

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AUTHORITY: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1356, 1372, 1379, 1731–32; section 643, Public Law 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

EFFECTIVE DATE NOTE: At 73 FR 76911, Dec. 18, 2008, the authority citation for Part 214 was revised, effective Jan. 17, 2009. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185, 1186a, 1187, 1221, 1253, 1281, 1282, 1301–1305 and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

(a) *General*—(1) *Nonimmigrant classes.* For the purpose of administering the nonimmigrant provisions of the Act, the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

(i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15) (H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien’s spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiancé(e), (K)(ii) for the spouse, and (K)(iii) for the children of either;

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien’s spouse and children;

(vii) Section 101(a)(15)(Q)(ii) is divided to create a (Q)(iii) for subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(Q)(ii) of the Act;

(viii) Section 101(a)(15)(T)(ii) is divided into (T)(ii), (T)(iii) and (T)(iv) for the spouse, child, and parent, respectively, of a nonimmigrant classified under section 101(a)(15)(T)(i); and

(ix) Section 101(a)(15)(U)(ii) is divided into (U)(ii), (U)(iii), (U)(iv), and (U)(v) for the spouse, child, parent, and siblings, respectively, of a nonimmigrant classified under section 101(a)(15)(U)(i); and

(2) *Classification designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second

column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A-1.
101(a)(15)(A)(ii)	A-2.
101(a)(15)(A)(iii)	A-3.
101(a)(15)(B)(i)	B-1.
101(a)(15)(B)(ii)	B-2.
101(a)(15)(C)(i)	C-1.
101(a)(15)(C)(ii)	C-2.
101(a)(15)(C)(iii)	C-3.
101(a)(15)(D)(i)	D-1.
101(a)(15)(D)(ii)	D-2.
101(a)(15)(E)(i)	E-1.
101(a)(15)(E)(ii)	E-2.
101(a)(15)(F)(i)	F-1.
101(a)(15)(F)(ii)	F-2.
101(a)(15)(G)(i)	G-1.
101(a)(15)(G)(ii)	G-2.
101(a)(15)(G)(iii)	G-3.
101(a)(15)(G)(iv)	G-4.
101(a)(15)(g)(v)	G-5.
101(a)(15)(H)(i)(B)	H-1B.
101(a)(15)(H)(i)(C)	H-1C.
101(a)(15)(H)(ii)(A)	H-2A.
101(a)(15)(H)(ii)(B)	H-2B.
101(a)(15)(H)(iii)	H-3.
101(a)(15)(H)(iv)	H-4.
101(a)(15)(I)	I.
101(a)(15)(J)(i)	J-1.
101(a)(15)(J)(ii)	J-2.
101(a)(15)(K)(i)	K-1.
101(a)(15)(K)(ii)	K-3.
101(a)(15)(K)(iii)	K-2; K-4.
101(a)(15)(L)(i)	L-1.
101(a)(15)(L)(ii)	L-2.
101(a)(15)(M)(i)	M-1.
101(a)(15)(M)(ii)	M-2.
101(a)(15)(N)(i)	N-8.
101(a)(15)(N)(ii)	N-9.
101(a)(15)(O)(i)	O-1.
101(a)(15)(O)(ii)	O-2.
101(a)(15)(O)(iii)	O-3.
101(a)(15)(P)(i)	P-1.
101(a)(15)(P)(ii)	P-2.
101(a)(15)(P)(iii)	P-3.
101(a)(15)(P)(iv)	P-4.
101(a)(15)(Q)(i)	Q-1.
101(a)(15)(Q)(ii)	Q-2.
101(a)(15)(Q)(iii)	Q-3.
101(a)(15)(R)(i)	R-1.
101(a)(15)(R)(ii)	R-2.
101(a)(15)(S)(i)	S-5.
101(a)(15)(S)(ii)	S-6.
101(a)(15)(S) qualified family members ..	S-7.
101(a)(15)(T)(i)	T-1.
101(a)(15)(T)(ii)	T-2.
101(a)(15)(T)(iii)	T-3.
101(a)(15)(T)(iv)	T-4.
101(a)(15)(U)(i)	U-1.
101(a)(15)(U)(ii)	U-2, U-3, U-4, U-5
101(a)(15)(V)	V-1, V-2, or V-3
NAFTA, Principal	TN.
NAFTA, Dependent	TD.
Visa Waiver, Business	WB.
Visa Waiver, Tourist	WT.

NOTE 1: The classification designation K-2 is for the child of a K-1. The classification designation K-4 is for the child of a K-3.

NOTE 2: The classification designation V-1 is for the spouse of a lawful permanent resi-

dent; the classification designation V-2 is for the principal beneficiary of an I-130 who is the child of an LPR; the classification V-3 is for the derivative child of a V-1 or V-2 alien.

(3) *General requirements.* (i) Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived. A nonimmigrant alien's admission to the United States is conditioned on compliance with any inspection requirement in §235.1(d) or of this chapter. The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission. An alien applying for extension of stay must present a passport only if requested to do so by the Department of Homeland Security. The passport of an alien applying for extension of stay must be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien must agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension.

(ii) At the time of admission or extension of stay, every nonimmigrant alien must also agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay, or upon abandonment of his or her authorized nonimmigrant status, and to comply with the departure procedures at section 215.8 of this chapter if such procedures apply to the particular alien. The nonimmigrant alien's failure to comply with those departure requirements, including any requirement that the alien provide biometric identifiers, may constitute a failure of the alien to maintain the terms of his or her nonimmigrant status.

(iii) At the time a nonimmigrant alien applies for admission or extension of stay, he or she must post a bond on Form I-352 in the sum of not less

than \$500, to ensure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the Commissioner of CBP, the Director of U.S. Citizenship and Immigration Services, an immigration judge, or the Board of Immigration Appeals.

(b) *Readmission of nonimmigrants under section 101(a)(15) (F), (J), (M), or (Q)(ii) to complete unexpired periods of previous admission or extension of stay—*

(1) *Section 101(a)(15)(F)*. The inspecting immigration officer shall readmit for duration of status as defined in §214.2(f)(5)(iii), any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(F) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;
- (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and either:
 - (A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or
 - (B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(2) *Section 101(a)(15)(J)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(J) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;
- (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

(ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport unless exempt from the requirement for the presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay or copy three of the last Form IAP-66 issued to the alien. Form I-94 or Form IAP-66 must show the unexpired period of the alien's stay endorsed by the Service.

(3) *Section 101(a)(15)(M)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(M) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence not exceeding thirty days solely in contiguous territory;
- (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

(4) *Section 101(a)(15)(Q)(ii)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding 30 days solely in contiguous territory or adjacent islands;
- (iii) Is in possession of a valid passport;
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

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stay. The principal alien must also present a Certification Letter issued by the Department of State's Program Administrator.

(c) *Extensions of stay*—(1) *Filing on Form I-129*. An employer seeking the services of an E-1, E-2, H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, R-1, or TN nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I-129. The petition must be filed with the fee required in §103.7 of this chapter, and the initial evidence specified in §214.2, and on the petition form. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases dependents of the worker should file on Form I-539.

(2) *Filing on Form I-539*. Any other nonimmigrant alien, except an alien in F or J status who has been granted duration of status, who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay on Form I-539 with the fee required in §103.7 of this chapter together with any initial evidence specified in the applicable provisions of §214.2, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K-3/K-4 status must do so in accordance with §214.2(k)(10).

(3) *Ineligible for extension of stay*. A nonimmigrant in any of the following classes is ineligible for an extension of stay:

- (i) B-1 or B-2 where admission was pursuant to the Visa Waiver Pilot Program;
- (ii) C-1, C-2, C-3;
- (iii) D-1, D-2;

(iv) K-1, K-2;

(v) Any nonimmigrant admitted for duration of status, other than as provided in §214.2(f)(7);

(vi) Any nonimmigrant who is classified pursuant to section 101(a)(15)(S) of the Act beyond a total of 3 years; or

(vii) Any nonimmigrant who is classified according to section 101(a)(15)(Q)(ii) of the Act beyond a total of 3 years.

(4) *Timely filing and maintenance of status*. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

(5) *Decision in Form I-129 or I-539 extension proceedings*. Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539.

(d) *Termination of status*. Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or, pursuant to notification in the FEDERAL REGISTER, on the basis of national security, diplomatic, or public safety reasons.

(e) *Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(f) *Registration and false information.* A nonimmigrant's admission and continued stay in the United States is conditioned on compliance with any registration, photographing, and fingerprinting requirements under § 264.1(f) of this chapter that relate to the maintenance of nonimmigrant status and also on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to register or to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

(g) *Criminal activity.* A condition of a nonimmigrant's admission and continued stay in the United States is obedience to all laws of United States jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(1)(C)(i) of the Act.

(h) *Education privacy and F, J, and M nonimmigrants.* As authorized by sec-

tion 641(c)(2) of Division C of Pub. L. 104-208, 8 U.S.C. 1372, and § 2.1(a) of this chapter, the Service has determined that, with respect to F and M nonimmigrant students and J nonimmigrant exchange visitors, waiving the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, is necessary for the proper implementation of 8 U.S.C. 1372. An educational agency or institution may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the educational agency or institution is required to report under 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) on the basis of FERPA and any regulation implementing FERPA. The waiver of FERPA under this paragraph authorizes and requires an educational agency or institution to report information concerning an F, J or M nonimmigrant that would ordinarily be protected by FERPA, but only to the extent that 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

(i) *Employment in a health care occupation.* (1) Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a health care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(2) A TN nonimmigrant may establish that he or she is eligible for a waiver described at 8 CFR 212.15(n) by providing evidence that his or her initial admission as a TN (or TC) nonimmigrant health care worker occurred before September 23, 2003, and he or she was licensed and employed in the United States as a health care worker before September 23, 2003. Evidence

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may include, but is not limited to, copies of TN or TC approval notices, copies of Form I-94 Arrival/Departure Records, employment verification letters and/or pay-stubs or other employment records, and state health care worker licenses.

(j) *Extension of stay or change of status for health care worker.* In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), the petitioning employer may file a Form I-129 to extend the approval period for the alien's classification for the nonimmigrant status. If the alien is in the United States and is eligible for an extension of stay or change of status, the Form I-129 also serves as an application to extend the period of the alien's authorized stay or to change the alien's status. Although the Form I-129 petition may be approved, as it relates to the employer's request to classify the alien, the application for an extension of stay or change of status shall be denied if:

(1) The petitioner or applicant fails to submit the certification required by 8 CFR 212.15(a) with the petition or application to extend the alien's stay or change the alien's status; or

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While DHS may admit, extend the period of authorized stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004 (or on or before July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admis-

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sion, change of status, or extension of stay as a health care worker.

[26 FR 12067, Dec. 16, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §214.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 73 FR 78127, Dec. 19, 2008, §214.1 was amended by adding paragraph (k), effective Jan. 18, 2009. For the convenience of the user, the added text is set forth as follows:

§214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(k) *Denial of petitions under section 214(c) of the Act based on a finding by the Department of Labor.* Upon debarment by the Department of Labor pursuant to 20 CFR 655.31, USCIS may deny any petition filed by that petitioner for nonimmigrant status under section 101(a)(15)(H) (except for status under sections 101(a)(15)(H)(i)(b1)), (L), (O), and (P)(i) of the Act) for a period of at least 1 year but not more than 5 years. The length of the period shall be based on the severity of the violation or violations. The decision to deny petitions, the time period for the bar to petitions, and the reasons for the time period will be explained in a written notice to the petitioner.

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

The general requirements in §214.1 are modified for the following nonimmigrant classes:

(a) *Foreign government officials—(1) General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(A) of the Act. An alien who has a nonimmigrant status under section 101(a)(15)(A)(i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section (101)(a)(15)(A)(iii) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more