



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

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MEMORANDUM FOR: Regional Directors
District Directors
Officers-In-Charge
Service Center Directors

FROM: William R. Yates /s/ Joseph D. Cuddihy
Deputy Executive Associate Commissioner
Immigration Services Division
Office of Field Operations

SUBJECT: Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petitions

This memorandum provides guidance on the implementation of recent legislation relating to the employment of spouses of E and L beneficiaries, as well as the overseas employment requirements for beneficiaries of L blanket petitions.

A. Employment of E and L Nonimmigrant Spouses

Effective January 16, 2002, Public Law 107-124 and Public Law 107-125, respectively, have amended section 214(e) and section 214(c)(2) of the Immigration and Nationality Act (Act) by authorizing the employment of spouses of E-1 treaty traders or E-2 treaty investors, and spouses of L-1 intracompany transferees within the United States who have been admitted under sections 101(a)(15)(E) or 101(a)(15)(L) of the Act, respectively. Previously, with the exception of spouses and unmarried dependent children of E nonimmigrant employees of the Taiwan Economic and Cultural Representative Office (TECRO), spouses accompanying or following to join principal E and L nonimmigrants have been barred from seeking employment within the

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United States. Because the statute is immediately effective, immediate implementation of this law is necessary.

Public Law 107-124 adds a new subsection to section 214(e) of the Act which states that in the case of the spouse admitted under section 101(a)(15)(E) of the Act who is accompanying or following to join a principal alien admitted under this section, the Attorney General “shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.”

Public Law 107-125 adds a new subsection to section 214(c)(2) of the Act which states that in the case of the spouse admitted under section 101(a)(15)(L) of the Act who is accompanying or following to join a principal alien admitted under this section, the Attorney General “shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.

Neither Public Law 107-124 nor Public Law 107-125 limits the scope and nature of the authorized employment. They provide “open market” employment authorization. While both provisions state that the Attorney General “shall authorize” employment authorization for a spouse, the Service must still make a determination that the individual in question is in fact an accompanying or following to join spouse who has been admitted under section 101(a)(15)(E) or (L) of the Act or, subsequent to his or her last admission, changed their status to an E or L. Also, it should be noted that there are no provisions that allow for employment of other dependents (i.e. dependent children) of the principal E or L nonimmigrant.

B. Employment Filing Procedures for E and L Nonimmigrant Spouses

To obtain employment authorization and a document evidencing this authorization, the E or L nonimmigrant spouse must file Form I-765, Application for Employment Authorization, and submit the required fee. Effective February 19, 2002, the required fee has increased to \$120.

The Form I-765 must be submitted to the Service Center with jurisdiction over the dependent spouse’s place of residence. However concurrently filed applications with Form I-129 petitions for E-1 and E-2 principal aliens can only be filed at the appropriate California or Texas Service Centers. The dependent spouse must provide evidence of the E or L nonimmigrant principal current status along with the Form I-765. In order to establish a valid marital relationship and verify current status of the dependent spouse and E and L nonimmigrant principal, both the dependent spouse’s and the E and L nonimmigrant principal’s Form I-94, Arrival—Departure Record, evidencing admission as or change of status to an E or L nonimmigrant should be provided. The Office of Inspections is in the process of updating the Inspector’s Field Manual to reflect the new I-94 notations (indicating either spouse or child) for

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dependents of E and L principal nonimmigrants. When available, applicants should submit a copy of the petition approval notice of the E or L nonimmigrant principal to assist in verifying status.

The regulations at 8 CFR 274a.12(a) are being amended to add the dependent spouse of a principal E and L nonimmigrant to the list of categories of aliens who are authorized to be employed in the United States without restriction.

C. Employment Authorization Processing Procedures

Form I-765 currently contains a space in which the applicant must fill in the basis for the employment authorization. Applicants covered by these procedures should write in the words “spouse of E nonimmigrant” or “spouse of L nonimmigrant” as appropriate. Field offices should be careful to recognize this new basis for employment authorization and should not reject these applications on the basis that no employment authorization category exists.

Dependent spouses of E and L nonimmigrants will be authorized employment for the period of admission and/or status of their spouses not to exceed (NTE) two years. In addition, the dependent spouses may file the Form I-765 concurrently with the Form I-539, Application to Extend or Change Nonimmigrant Status. As stated previously, concurrently filed applications with Form I-129 petitions for E-1 and E-2 principal aliens can only be filed at the appropriate California or Texas Service Centers.

HQISD has modified the tables in CLAIMS to allow generation of a receipt on Form I-797 and a corresponding Form I-766 that reflect this new basis of employment authorization. The basis of work authorization for the spouse of an E nonimmigrant will be noted as “A-17” under “Category” on Form I-766, and (a)(17) on Form I-797. The basis of work authorization for the spouse of an L nonimmigrant will be noted as “A-18” under “Category” on Form I-766, and (a)(18) on Form I-797.

By regulation, the Service has up to 90 days from the date the Service receives an alien's Form I-765 to adjudicate the application. In the event that an alien does not receive the Form I-766 within this 90 day period, he or she can go to a District office and receive an employment authorization document that is valid for up to 240 days. District offices will follow current guidelines for issuance of interim Employment Authorization Documents.

As noted earlier in this memorandum, the statute states that the Attorney General “shall” authorize the spouse of an E or L nonimmigrant who has been admitted under sections 101(a)(15)(E) or 101(a)(15)(L) of the Act to engage in employment in the United States. Therefore, before granting employment authorization under this provision, the Service must determine that the applicant for employment authorization is in fact a “spouse” who has been

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admitted under or who has changed status to the appropriate section of the Act and that the E or L nonimmigrant principal's status is valid. To make this determination, field offices should check the E or L nonimmigrant principal's Form I-94, to determine whether the applicant is a spouse of the E or L nonimmigrant principal. The dependent spouse's Form I-94 indicating his or her admission under sections 101(a)(15)(E) or 101(a)(15)(L) of the Act will establish eligibility for employment authorization. The Office of Inspections is in the process of updating the Inspector's Field Manual to reflect the new I-94 notations (indicating either spouse or child) for dependents of E and L principal nonimmigrants. In addition, the principal's I-94 should be checked to confirm that status has not expired.

D. Changes to certain requirements involving “blanket” L nonimmigrants

In addition to amending section 214(c)(2) of the Act to permit spouses of L nonimmigrants to work in the United States, Public Law 107-125 also amends this section to allow aliens to qualify for L visas after having worked for 6 months overseas for employers if the employers have filed blanket L petitions and have met the blanket petitions' requirements. Previously, this section of the Act required that a beneficiary of an L visa, within three years preceding the time of his application for admission into the United States, have been employed abroad continuously for one-year by the petitioning employer.

Public Law 107-125 amends section 214(c)(2) of the Act by adding a new sentence at the end of paragraph (A), which states that, in the case of an alien seeking admission under section 101(a)(15)(L), “the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.” While this change is also effective immediately and should be applied to any pending petitions that present this issue, the Service will publish a rule in the near future that reflects necessary changes to the regulations.