

Inspector's Field Manual

Upon completion, affix the Form I-94, Departure Record to the student's passport, if not exempt. The SEVIS Form I-20MN and the passport containing the Form I-94 are to be given to the student.

Readmission. Upon subsequent entries, a student with a SEVIS Form I-20MN may have a separate page issued by the DSO authorizing travel or for providing certification or recommendation for practical training. The DSO is required to endorse the SEVIS Form I-20MN confirming that the student is enrolled and attending the school. Endorsements are valid for 6 months. Therefore, the DSO must endorse the SEVIS Form I-20MN twice a year to confirm that the student is maintaining status. In addition, the SEVIS computer record will be updated by the DSO each term or session to reflect that the student is still registered at the institution and maintaining status. Therefore, if a student travels outside the United States during an ongoing semester, the POE can refer to the SEVIS to confirm a student's enrollment status. To process the returning student, review the SEVIS Form I-20MN for completeness and for the signatures of both the DSO and the student:

- The CBP officer is not required to place an additional admission stamp on the form.
- Endorse the NIV with the admission stamp near the NIV and record the SEVIS ID Number on the visa page, if not already annotated.
- Complete the Form I-94 as noted above.
- The SEVIS Form I-20MN is to be returned to the student.

Recording Admission. The admission of the M-1 student making an initial entry to the United States with a SEVIS issued form that has been not been endorsed with an admission stamp is to be entered into SEVIS. Refer to Chapter 15.16 Student and Exchange Visitor Processing.

- Air/sea POEs: The SEVIS record will be updated by entering specific information in the COA screens for all admission.
- Land POEs: The secondary officer will record the student's initial entry directly into SEVIS. Properly documented returning students may be released on primary, if otherwise admissible.

Special notes:

(A) Certain students with expired visas. M-1 students and dependents with expired visas who have been outside the U.S. for less than 30 days solely to contiguous territory may be readmitted if they have their original Form I-94 and a valid Form I-20MN [See 8 CFR 214.1(b)(1) and 22 CFR 41.112]. The "adjacent island" exemption, available to F and J nonimmigrants, does not apply to M students.

This provision does not apply to:

- citizens of countries identified by the U.S. Department of State as sponsors of terrorism, refer to Appendix 15.11; or,

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- individuals that have applied for a new visa while abroad as annotated "Application Received at specific post on date" on the last page of the passport by the Consulate or Embassy abroad.

(B) Reduced Course Load-Commuter Students from Canada & Mexico. Canadian or Mexican nationals who are enrolled, or will enroll, in a course of study are eligible for admission to pursue part-time study provided the alien meets all other M-1 requirements, with the following accommodations. The alien must maintain actual residence and place of abode in the country of nationality, must apply for admission at a land POE, and must be enrolled in a United States school within 75 miles of the international border. After paying the prescribed fee, the alien will be issued a multiple-entry Form I-94 with an admission period that reflects the current semester or term of study, as noted in the alien's SEVIS Form I-20MN. The DSO will issue all reduced course load students a new SEVIS Form I-20MN for each new semester or term that the student is enrolled at the school. A new multiple-entry Form I-94 is required for each new semester or term, with fee.

(C) Full Course of Study: Full course of study is generally defined as 12 credit hours or 18-22 weekly clock hours per term or session.

(D) Lacking SEVIS Form I-20MN. Whenever possible, POEs should attempt to obtain the proper SEVIS documentation (faxed copy is acceptable) in order to admit the student rather than issue a Form I-515, Notice to Student or Exchange Visitor or defer the inspection. However, a Form I-515 may be issued to a student not in possession of a valid SEVIS form, if the individual presents a valid visa (if required) and the status can be verified in the SEVIS. Refer to Chapter 15.16 for Form I-515 processing guidelines.

(E) Employment. Optional Practical Training (OPT) is the only form of authorized employment available to an M-1 student, and is limited to a 6 month period following the successful completion of the completion of the M-1 program.

- OPT is employment that is related to a student's specified curriculum, but not required by it.
- OPT must be recommended by the DSO and authorized by USCIS before the student begins work.
- In SEVIS, the DSO recommends OPT as an update to the student's record. The OPT recommendation appears on the student information screen and on page three of the student's printed SEVIS Form I-20MN. The recommendation does not include a name and address of an employer, if known.
- Temporary absence of M -1 student granted practical training. An M - 1 student who has been granted permission to accept employment for OPT and who temporarily

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departs from the United States, may be readmitted for the remainder of the authorized period indicated on the student's SEVIS Form I-20MN. The student must be returning to the United States to perform the authorized practical training.

- A student may not be readmitted to begin practical training, which was not authorized prior to the student's departure from the United States.

(F) Completion of M-1 Program that has a duration of more than one-year:

- Student may file for an extension; or,
- Student may depart the United States and be readmitted with a new SEVIS Form I-20MN, if otherwise admissible.

(G) SEVIS Fee Initial entry foreign students exempt visa requirements issued a SEVIS Form generated on or after **September 1, 2004** should present either Form I-797, Receipt Notice or an Internet Receipt Notice confirming payment of the SEVIS fee. If unavailable, the POE should refer to the student's SEVIS record to verify fee payment. The receipt information in SEVIS is located on the Student information page. There is a block entitled "I-901 Fee Payment Information". There is a lapse between the time the student pays the fee and when the confirmation appears in SEVIS, which allows ICE to process the payment (approximately 10-days). The receipt is not required if payment can be verified in SEVIS. If payment status indicates, "cancelled", the POE should still accept this as proof of payment. (Added by CBP 4-04)

(2) Classification: M-2 Spouse and children of M-1 vocational student.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (M-1) unless exempt. SEVIS Form I-20MN, student copy. The SEVIS will generate a separate Form I-20MN for each M-2 identified by "dependent copy" over the bar code and SEVIS ID. The dependent's SEVIS Form I-20MN will include both the dependent's and the principal's biographical information. When processing M-2 dependents, endorse the SEVIS Form I-20MN and return it to the alien.

Qualifications: Must be an individual listed in the general description, accompanying or following to join a principal M-1 student. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit M-2 to same date as M-1.

Notations on Form I-94: Front: M-2, same date to which admitted as M-1, Reverse: In box 18 (occupation), identify dependent as spouse or child, as appropriate. Record the SEVIS Identification number as it appears on the SEVIS Form I-20MN. Note in box 22 "N" and the 10-digit SEVIS number. DO NOT WRITE SEVIS. Record the same number on the "Record of Changes" lines provided on the reverse portion of the Form I-94, Departure Record.

Study: The M-2 spouse of an M-1 student may not engage in full-time study, and the M-2

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child may only engage in full-time study if the study is an elementary or secondary school (kindergarten through twelfth grade). The M-2 spouse and child may engage in study that is avocational or recreational in nature.

Recording the Admission:

Special notes: See notes on M-1 above.

(n) Certain special immigrant spouses and children.

(1) Classification: **N-8** Includes parent of "child" accorded special immigrant status (SK-3).

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (N-8) unless exempt.

Qualifications: Must be the parent of a child classified as an SK-3 nonimmigrant. See section 101(a)(27)(I) of the INA. The parent is eligible only while the SK-3 immigrant remains a child. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit N-8 for up to 3 years.

Notations on I-94: N-8, admit for 3 years or to 21st birthday of child.

Special notes:

(A) Employment authorization. N-8 aliens are authorized employment pursuant to 8 CFR 274a.12(a) and may be issued an EAD.

(2) Classification: **N-9** Includes the child of an N-8 or child of an alien accorded an SK-1, SK-2, or SK-4 special immigrant visa.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (N-9), unless exempt.

Qualifications: Must be a child of either an N-8 described above or of an SK special immigrant. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit N-9 for 3 years or to 21st birthday.

Notations on I-94: N-9, Same date as N-8 (if child of N-8) or the lesser of 3 years or 21st birthday (if child of SK).

Special notes:

(A) Qualifying relationships. A N-9 nonimmigrant may be either the child of a former

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G-4 who acquired SK permanent resident status (when the child does not qualify for corresponding resident status), or the child of an N-8 parent who is temporarily remaining with an SK-3. See definitions for SK immigrants in §101(a)(27)(I).

(B) Employment authorization. Employment is authorized, issue EAD.

(o) Aliens of extraordinary ability.

(1) Classification: **O-1** Alien with extraordinary ability in the sciences, arts, education, business, or athletics; or who has attained extraordinary achievements in the motion picture or television industry.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (O-1) unless exempt. Must have evidence of approved I-129 petition in the form of a notation on the nonimmigrant visa indicating the petition number and employer's name, or a Notice of Action, Form I-797, indicating approval.

Qualifications: Individual (not group or team) must fall within general description of classification above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit O-1 for the validity period of the petition, plus up to 10 days before the beginning of the petition period or 10 days after its expiration. Do not exceed 3 years total [See 8 CFR 214.2(o)(6)(iii)(A), 8 CFR 214.2(o)(10).].

Notations on I-94: **Front**: O-1 and expiration date of authorized stay (expiration date of petition validity plus 10 days). **Reverse**: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port-of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 3 years and may be extended. The beneficiary may also have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as O-3. Dependents may not work but may attend school without changing status.

(C) Certification of Health Care Workers. If the alien beneficiary is seeking admission for the primary purpose of performing labor in a covered health care occupation, the alien must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from an approved credentialing organization listed in 8 CFR 212.15(e)

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or (h). The covered health care occupations requiring valid certification include licensed practical nurses, licensed vocational nurses, registered nurses, occupational therapists, physical therapists, speech language pathologists and audiologists, medical technologists (clinical laboratory scientists), medical technicians (clinical laboratory technicians), and physician assistants. This requirement does not apply to aliens admitted to perform services in a non-clinical health care occupation in which the alien is not required to perform direct or indirect patient care (e.g., teachers, researchers, or managers of health care facilities), aliens coming to receive training in health care worker occupations (e.g., F-1s, H-3s, or J-1s), or to spouses and dependent children. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health care workers, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit health care workers and approve applications for extension of stay and/or change of status subject to the following conditions (Added by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(2) Classification: **O-2** Alien accompanying or assisting an O-1 artist or athlete.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or exempt. Nonimmigrant visa (O-2) unless exempt. Evidence of an approved I-129 petition to work a specific event or performance, either in the form of a consular notation on the visa or an approval notice on Form I-797.

Qualifications: Must possess critical skills and at least 1 year of experience with the principal O-1. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit (O-2) for the validity period of the petition (which cannot exceed 3 years), plus a period of up to 10 days before the validity period begins and 10 days after

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the validity period ends [See 8 CFR 214.2(o)(6)(iii)(B), 8 CFR 214.2(o)(10).].

Notations on I-94: **Front:** O-2 and expiration date of authorized stay (expiration date of petition validity plus 10 days).

Reverse: occupation, petition number, and employer's name and address.

Special notes:

(A) Arrival prior to O-1. An O-2 may precede the O-1 to the U.S. to prepare for the event.

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port-of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 3 years and may be extended. The beneficiary may also have a copy of the approval notice, Form I-797, which is readily verifiable.

(C) Dependents. Dependents are admitted as O-3. Dependents may not work but may attend school without changing status.

(3) Classification: **O-3** Spouse or child of an O-1 or O-2.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (O-3) unless exempt.

Qualifications: Must be spouse or child of O-1 or O-2. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit O-3 for the same time period as the principal O-1 or O-2.

Notations on I-94: O-3 and same expiration date of authorized stay as principal. Enter the name of the principal alien on the reverse, in block 26.

Special notes: Dependent employment. Dependent O aliens may not work but may attend school without changing status.

(p) Artists, athletes, and entertainers.

(1) Classification: **P-1** Internationally recognized athlete or entertainment group or essential support personnel.

Documents required: Passport valid for a minimum of 6 months beyond the period of

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admission, unless otherwise provided for or waived. Nonimmigrant visa (P-1) unless exempt. Evidence of an approved I-129 petition, either a notation on the nonimmigrant visa or a copy of the approval notice on Form I-797.

Qualifications: Must be an individual or team member, qualified as above, entering to engage in such activities. Essential support personnel (except for circus employment) must have one year of experience with the principal P-1 individual or group. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-1 for validity of petition, plus 10 days prior to validity date and up to 10 days after the expiration date, not to exceed 1 year for group members or 5 years for individual athletes [See 8 CFR 214.2(p)(8)(iii)(A), 8 CFR 214.2(p)(12)].

Notations on I-94: **Front:** P-1 and expiration date of authorized stay. **Reverse:** Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port of entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 5 years for individual athletes and may be extended, not to exceed 10 years. Other P-1 petitions are valid for up to 1 year and may be extended in increments of 1 year. The beneficiary may have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(C) Essential support personnel. P-1 individuals and groups may include essential support personnel. Generally, group members and support personnel must have 1 year of experience with the group. There is a 25% exception to the 1-year requirement for group membership. This 1-year experience requirement does not apply to circus personnel.

(2) Classification: **P-2** Artist or entertainer or essential support personnel in a reciprocal exchange program between an organization in the U.S. and an organization in one or more foreign countries.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-2) unless exempt. Evidence of an approved I-129 petition, either a consular notation on the nonimmigrant visa or a copy of the petition approval notice, Form I-797.

Qualifications: Individual or group meeting qualifications of the category as stated above.

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All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-2 for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date.

Notations on I-94: Front: P-2 and expiration date of authorized stay (expiration date of petition validity plus 10 days.) Reverse: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 1 year and may not be extended beyond a total admission period of 1 year. Beneficiary may have a copy of the petition approval notice, Form I-797, which is readily verifiable.

(B) Limitation on readmission. A P-2 who has completed a year in that status ordinarily may not reenter the U.S. on a new P-2 petition for 3 months. A waiver is available as part of the petition process.

(C) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(3) Classification: **P-3** Artist or entertainer coming to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-3) unless exempt. Evidence of an approved I-129 petition, either a consular notation in the nonimmigrant visa or an approval notice on Form I-797.

Qualifications: Must be an individual or group member coming to perform in a program which meets the definition above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-3 for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date.

Notation on I-94: Front: P-3 and expiration date of authorized stay (expiration date of petition validity plus 10 days.) Reverse: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa

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issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 1 year and may not be extended beyond a total admission period of 1 year. Beneficiary may have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(4) Classification: **P-4** Spouse or child of a P-1, P-2, or P-3.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-4), unless exempt. May have a copy of approval notice of petition for principal alien.

Qualifications: Must be accompanying or following to join a principal P-1, P-2, or P-3. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit (P-4), same as principal.

Notation on I-94: P-4 and same expiration date of authorized stay as principal.
Note the reverse, in block 26 with the name of the principal alien.

Special notes: See notes on dependents above.

(q) Cultural Visitors.

(1) Classification: **Q-1** includes aliens coming to take part in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien's country.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (Q-1), unless exempt. Evidence of an approved I-129 petition, either a consular notation on the visa or a copy of the approval notice, Form I-797.

Qualifications: Must be at least 18 years of age, coming to perform services described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit as Q to the petition validity but not to exceed 15 months.

Notation on I-94: Front: Q-1, (date to which admitted). Reverse: Petition number and occupation.

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Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 15 months and may not be extended.

(B) Limitation on readmission. An alien who has completed a 15 month Q-1 program must remain outside the U.S. for 1 year before being readmitted as a Q-1 nonimmigrant.

(C) Dependents. There is no dependent provision for spouse or child of a Q-1 but they may be otherwise admissible as a visitor.

(2) Classification: Q-2 includes principal participants in the Irish Peace Process Cultural and Training Program (IPPCTP) coming temporarily to the United States for employment and/or training. (Revised 12/12/05; CBP 16-06)

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless exempt. Nonimmigrant Q-2 visa and original Certification Letter from the Department of State's (DOS) Program Administrator documenting that individual is a participant in the IPPCTP and specifies the employer/trainer to whom participant is destined.

Qualifications: The program participant must: **1)** be between the ages of 18 and 35 at the time of initial departure for the United States, and coming to participate in the IPPCTP; **2)** be a citizen of the United Kingdom or the Republic of Ireland and have been a resident of Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland for at least 18 months prior to departure for the United States (Periods spent away from a permanent address, but still within the UK or Ireland while pursuing training or educational opportunities, should be disregarded.); **3)** not be in possession of, or currently studying for, a degree from a university or an institute of higher education; and **4)** have been unemployed for at least 12 out of the last 15 months at the time of scheduled departure to the United States.

Terms of admission on initial entry: Admit as Q-2 for 2 years, unless Certification Letter specifies shorter program period.

Notation on I-94: Front: "Q-2 (date to which admitted)" not to exceed 2 years from the initial date of entry. Reverse: Certification Letter number at block 22. At block 26, enter "IPPCTP", and name of employer/or trainer.

Special notes:

(A) Port of initial entry: Q-2s and eligible dependents (Q-3) must be inspected at CBP

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Pre-Flight Dublin or Shannon, where they will be issued a Form I-94.

(B) Readmission after temporary absence: Total period of stay cannot exceed a total of 3 years from the initial date of admission of a principal alien admitted prior to December 10, 2004, and 2 years from the date of initial admission of a principal alien admitted on or after December 10, 2004. Form I-94 should be annotated at block 22 with the Certification Letter number and at block 26 with "IPPCTP", then name of employer/or trainer. (Q-2/Q-3s should retain their Form I-94s when they visit contiguous territory or adjacent islands, if such a visit will not exceed 30 days. See 8 CFR 214.1(b)(4)).

Principal participants or accompanying or following-to-join spouses or children of the principal who are in possession of valid passports, Q-2 or Q-3 visas, and original certification letters from the DOS' Program Administrator may be readmitted for the remainder of time authorized on their certification letters provided they have not been outside the United States in excess of 3 consecutive months. Such periods of time will not be added to the end of stay. Principal participants and dependents who remain outside the United States in excess of 3 consecutive months will not be readmitted on their initial Q-2 or Q-3 visa. Instead, any principal participant and eligible dependents wishing to rejoin the program will be required to reapply to the program and be in receipt of a new Q-2 or Q-3 visa and original certification letter issued by the DOS' Program Administrator, prior to any subsequent admission to the United States.

(D) Certification Letter: Principal must possess original at initial entry and any subsequent reentries. Please note that the machine-readable visa will list the Certification Letter Number in the annotation area.

(E) Employment: The principal participant is permitted to work only for the DOS-approved employer listed on the certification letter issued by DOS' Program Administrator. Q-3 dependents may not work.

(F) Unemployment: Short periods of work totaling no more than 13 weeks in the past 15 months may be waived.

(G) Foreign Residence Requirement: No participant in the IPPCTP shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence until that person has resided and been physically present in the person's country of nationality or last residence for an aggregate of at least 2 years following departure from the United States. This requirement is limited to aliens who are issued Q-2 visas after December 10, 2004.

A former Q-2 alien may apply for a waiver of the foreign residency requirement (on Form I-928). If the waiver is granted, the alien will receive an approval notice on a Form I-797. If a former Q-2 alien arrives in the United States without the I-797 and states that the foreign residency requirement has been waived, the CBP field officer should try to verify that the alien is eligible for admission into the United States. If the foreign residency requirement has been waived for a former Q-2, a nonimmigrant visa issued to that alien will include a notation that s/he is not subject to the foreign residency requirement.

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(3) Classification: Q-3 includes dependents of Q-2 aliens. (Revised 12/12/05; CBP 16-06)

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless exempt. Nonimmigrant Q-3 visa and original Certification Letter indicating the principal's program information.

Terms of Admission: Admit as Q-3 for duration period of principal's program.

Notation on I-94: On back of I-94: Principal's Certification Letter number at block 22, then at block 26 "Employment not authorized". Some spouses may also be principals and be classified as Q-2 and therefore authorized employment. Dependents may attend school without changing status.

(r) Religious workers.

(1) Classification: **R-1** Member of a religious denomination having a bona fide nonprofit religious organization in the U.S., coming to carry on the vocation of minister or religious professional, or to work in a religious vocation or occupation.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (R-1) unless exempt. Letter of invitation describing duties of position in the United States.

Qualifications: Membership in a religious denomination for at least 2 years immediately preceding entry. If working in a professional capacity, the applicant must have a minimum of a bachelor's degree in a related field, or its equivalent. All nonimmigrant grounds of inadmissibility apply. If working in a non-professional capacity, the applicant must be working for a tax exempt organization.

Terms of admission: Admit R-1 for a maximum of 3 years. Extensions are permitted for up to a total of 5 years.

Notations on I-94: **Front**: R-1 and expiration date of authorized stay. **Reverse**: Occupation and employer's name and address.

Special notes: **Limitation on readmission**. Do not readmit an R who has spent 5 years in the U.S. as an R unless he or she has resided and been physically present outside the U.S. for the immediate prior year, except for brief visits for business or pleasure.

(2) Classification: **R-2** Spouse or child of R-1.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa unless exempt.

Qualifications: Must be accompanying or following to join an R-1 alien. All nonimmigrant

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grounds of inadmissibility apply.

Terms of admission: Admit (R-2), same as principal.

Notation on I-94: R-2 and same expiration date of authorized stay as principal. Name of principal alien in block 26, on reverse of I-94.

Special notes: **Dependents:** May not work, but may attend school without changing status.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

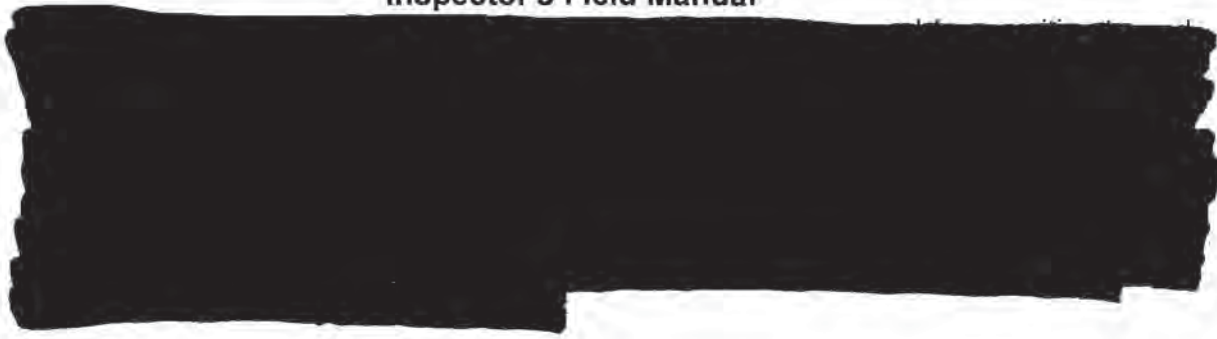
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(t) Reserved

(u) Reserved

(v) Spouse and Dependent Children of a Lawful Permanent Resident (LPR) Authorized to Reside and Work in the United States While Waiting to Obtain Immigrant Status.

(1) Classification: **V-1:** Spouse of a LPR who is the principal beneficiary of a Form I-130, Petition for Alien Relative.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-1 nonimmigrant classification, three requirements must be satisfied:

- The alien must be the spouse of a LPR;
- He or she must also be the principal beneficiary of a Form I-130, that was filed on or before December 21, 2000, under the F2A preference category; and,
- That petition must have been:
 - pending with the Immigration and Naturalization Service (INS) for at least 3 years; or,
 - approved and 3 years have passed since the filing date and a 2nd preference visa number is not yet available or the alien's application for an immigrant visa or adjustment of status is pending.

Terms of Admission: Admit V-1 for a maximum period of 2 years or up to the validity of the passport if less than 2 years. This time period is the maximum admission period and shall be used in most instances. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district

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director. (See also Special Note (E) regarding readmission.)

Notations on I-94: V-1, date 2 years from date of admission.

Special notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-1 nonimmigrant alien must have filed a Form I-485, Application to Register Permanent Residence or Adjust Status with the Immigration and Naturalization Service or an application for an immigrant visa with Department of State (DOS) in order to remain eligible for admission as a V-1 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure from the United States includes, but is not limited to, the INS Form I-797, Notice of Action or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an Official Form 233 (OF 233), Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the V-1 classification:

- If the alien no longer qualifies for the F2A immigrant visa category;
- If the marriage has terminated in the case of a V-1;
- When the Form I-130 has been revoked or denied; or
- When the Form I-485 or the immigrant visa application has been denied.

Like any nonimmigrant, a V-1 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens seeking admission as a V nonimmigrant. A V-1 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-1 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3 of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-1 nonimmigrant status. An alien in the United States in

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V-1 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-1 nonimmigrant may reside in the United States while waiting for his or her:

- Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- Application for adjustment of status to be adjudicated.

A nonimmigrant V-1 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or,
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall also simultaneously be terminated.

(D) Employment Authorization. An alien admitted to the United States in V-1 nonimmigrant status, or who has his or her status changed to V-1 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-1 admission or change of status by filing a Form I-765, Application for Employment Authorization, with the currently prescribed application fee to:

US INS
P.O. Box 7216
Chicago, IL 60680-7216

(E) Readmission. An alien in V-1 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-1 nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-1 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be

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denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a port-of-entry (POE), with evidence of filing Form I-797 the applicant will be treated as a regular V-1 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years). Advance parole is not required (dual intent).

(F) Unlawful Presence. An alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 or 10 years, section 214(o)(2) of the Act exempts an alien applying for admission as a V-1 nonimmigrant from this ground of inadmissibility.

(2) Classification: **V-2** An eligible child of an LPR who is the principal beneficiary of a Form I-130.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-2 nonimmigrant classification, three requirements must be satisfied:

- The alien must be the unmarried child of a LPR;
- He or she must also be the principal beneficiary of a Form I-130, that was filed on or before December 21, 2000, under the F2A preference category; and,
- That petition must have been:
 - pending with the INS for at least 3 years; or,
 - approved and 3 years have passed since the filing date and a 2nd preference visa number is not yet available or the alien's application for an immigrant visa or adjustment of status is pending.

Terms of Admission: Admit for 2 years if less than 19 years of age or until the date 45 days after the alien's 21st birthday, whichever is sooner. This time period is the maximum admission period and shall be used in most instances unless the validity of the passport if

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less than 2 years. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district director. (See also Special Note (E) regarding admission of an aging out V-2 and Special Note (F) regarding readmission.)

Notations on Form I-94: V-2, date 2 years from date of admission or 45 days after alien's 21st birthday, whichever is earlier.

Special Notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-2 nonimmigrant alien must have filed a Form I-485 or an application for an immigrant visa (with DOS) in order to remain eligible for admission as a V-2 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure includes, but is not limited to, the INS Form I-797 or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an OF 233, Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the classification:

- If the alien no longer qualifies for the F2A immigrant visa category;
- If the alien has married or has reached 21 years and 45 days of age;
- In the case of a step-relationship, the alien's parent's marriage has terminated and the petitioner and alien have no legal relationship;
- When the Form I-130 has been revoked or denied; or
- When the Form I-485 or the immigrant visa application has been denied.

Like any nonimmigrant, a V-2 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens applying for admission as a V nonimmigrant. A V-2 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or there are other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-2 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3

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of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-2 nonimmigrant status. An alien in the United States in V-2 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-2 nonimmigrant may reside in the United States while waiting for his or her:

- Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- Application for adjustment of status to be adjudicated.

A nonimmigrant V-2 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or,
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall (V-3) also be simultaneously terminated.

(D) Employment Authorization. An alien admitted to the United States in V-2 nonimmigrant status, or who has his or her status changed to V-2 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-2 admission or change of status by filing a Form I-765 with the currently prescribed application fee with the Chicago "Lock-box" address for the Missouri Service Center referenced above.

(E) Admission for Aging Out V-2s. If an alien is 19 years of age or older and applies for admission to the United States as a V-2 nonimmigrant, he or she shall be given an admission period ending 45 days after the alien's 21st birthday. As the beneficiaries of visa petitions filed prior to September 11, 2001, all V-2 nonimmigrant aliens, if otherwise eligible, qualify for 45 days of "age-out protection" under section 424 paragraph (2) of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

Special attention shall be paid to any child (as defined in section 101(b)(1) of the Act) arriving at a POE within months or days of reaching his or her 21st birthday with little or no possibility of the alien's priority date becoming current before age 21. If otherwise admissible, such an alien shall be admitted up to 45 days after his or her 21st birthday.

(F) Readmission: An alien in V-2 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-2

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nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-2 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a POE, with evidence of filing Form I-797 the applicant will be treated as a regular V-2 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years or 45 days after his or her 21st birthday, whichever is earlier). Advance parole is not required (dual intent).

(G) Unlawful Presence. A alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 or 10 years, section 214(o)(2) of the Act exempts an alien applying for admission as a V-2 nonimmigrant from this ground of inadmissibility.

(3) Classification: **V-3**: The accompanying or following to join child of a V-1 or V-2.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-3 nonimmigrant classification, he or she must be:

- The unmarried child of a qualifying V-1 or V-2 nonimmigrant; and,
- Accompanying or following to join such nonimmigrant (i.e., not the principal beneficiary of an F2A petition).

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Terms of Admission: Admit for 2 years if less than 19 years of age. This time period is the maximum admission period and shall be used in most instances unless the passport is valid for less than 2 years. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district director. (See Special Note (E) regarding readmission and Special Note (F) regarding age-outs.)

Notations on I-94: V-3, date 2 years from date of admission or 45 days after alien's 21st birthday, whichever is earlier.

Special Notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-3 nonimmigrant alien must have filed a Form I-485 or an application for an immigrant visa (with DOS) in order to remain eligible for admission as a V-3 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure includes, but is not limited to, the INS Form I-797 or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an OF 233, Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the V-3 classification:

- If he or she no longer qualifies for the F2A category;
- If the marriage of his or her V-1 parent has terminated;
- If he or she has married or has reached 21 years and 45 days of age;
- When the Form I-130 filed for his or her V-1 or V-2 parent has been revoked or denied; or
- When his or her Form I-485 or immigrant visa application has been denied.

Like any nonimmigrant, a V-3 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens applying for admission as a V nonimmigrant. A V-3 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or there are other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-3 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of

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admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3 of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-3 nonimmigrant status. An alien in the United States in V-3 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-3 nonimmigrant may reside in the United States while waiting for his or her:

- V-1 or V-2 parent's Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- application for adjustment of status to be adjudicated.

A nonimmigrant V-3 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the principal alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the status of the V-3 alien's V-1 or V-2 parent is terminated for any of these reasons, the status of the V-3 alien shall also be simultaneously terminated.

(D) Employment Authorization. An alien admitted to the United States in V-3 nonimmigrant status, or who has his or her status changed to V-3 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-3 admission or change of status by filing a Form I-765, with the currently prescribed application fee with the Chicago "Lock-box" address for the Missouri Service Center referenced above.

(E) Readmission. An alien in V-3 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-3 nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-3 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be

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denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a POE, with evidence of filing Form I-797 the applicant will be treated as a regular V-3 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years). Advance parole is not required (dual intent).

(F) Admission for Aging Out V-3. If an alien is 19 years of age or older and applies for admission to the United States as a V-3 nonimmigrant, he or she shall be given an admission period ending 45 days after the alien's 21st birthday. As the beneficiaries of visa petitions filed prior to September 11, 2001, all V-3 nonimmigrant aliens, if otherwise eligible, qualify for 45 days of "age-out protection" under section 424 paragraph (2) of the USA PATRIOT Act of 2001.

Special attention shall be paid to any child (as defined in section 101(b)(1) of the Act) arriving at a POE within months or days of reaching his or her 21st birthday with little or no possibility of the alien's priority date becoming current before age 21. If otherwise admissible, such an alien shall be admitted up to 45 days after his or her 21st birthday.

(G) Unlawful Presence. An alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 to 10 years, the section 214(o) of the Act exempts an alien applying for admission as a V-3 nonimmigrant from this ground of inadmissibility.

(w) Reserved

(x) Reserved

(y) Reserved

(z) NATO employees.

(1) Classification: **NATO-1** This classification is for the principal permanent representative of a member state of NATO resident in the U.S. and resident members of his/her official staff and members of their immediate families.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-1).

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Qualifications: Must be an alien described above. Inadmissible under 212(a)(3)(B)(i)(I) and (C) only.

Terms of admission: Admit NATO-1 for Duration of Status.

Notations on I-94: NATO-1, D/S

Special notes:

(A) Nonmilitary NATO. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(2) Classification: **NATO-2** Includes other representatives of member states to NATO and their immediate family members. Also includes NATO military members and their families.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa unless exempt.

Qualifications: Must be a person described above. Inadmissible only under 212(a)(3)(A)(i), (ii) and (iii) and 212(a)(3)(B)(i)(I) and (ii).

Terms of admission: Admit for Duration of Status. Military NATO-2 are exempt inspection.

Notations on I-94: NATO-2, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

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(3) Classification: **NATO-3** Includes the official clerical staff accompanying a representative of member state to NATO and members of their immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-3).

Qualifications: Must be an alien described above. Inadmissible only under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I) and (ii) of the Act.

Terms of admission: Admit NATO-3 for Duration of Status.

Notations on I-94: NATO-3, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(4) Classification: **NATO-4** Includes officials of NATO, other than those classified under NATO-1, and members of their immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-4).

Qualifications: Must be an alien described above. Excludable only under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I), and (ii) of the Act.

Terms of admission: Admit NATO-4 for Duration of Status.

Notations on I-94: NATO-4, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt

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inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(5) Classification: **NATO-5** Includes experts employed on missions on behalf of NATO, and their dependents.

Documents required: Passport must be valid for 6 months beyond the date to which admitted. Nonimmigrant visa (NATO-5).

Qualifications: Must be alien described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit NATO-5 for Duration of Status.

Notations on I-94: NATO-5, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(6) Classification: **NATO-6** Includes civilian employees of NATO military and their dependents.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-6).

Qualifications: Must be an individual described above. Excludable under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I), and (ii) of the Act only. See §102 of the Act.

Terms of admission: Admit NATO-6 for duration of status.

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Notations on I-94: NATO-6, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(7) Classification: **NATO-7** Includes attendants, servants, or personal employees of NATO-1 through NATO-6, and members of their immediate family.

Documents required: Passport must be valid for 6 months beyond the date to which the alien desires to be admitted. Nonimmigrant visa (NATO-7).

Qualifications: Must be alien described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit NATO-7 for three (3) years. [Amended IN02-24]

Notations on I-94: NATO-7, three years from date of admission. Enter name of employer in block 26, on reverse of I-94. [Amended IN02-24]

Special notes:

(A) NATO countries. See list in Chapter 11.2.

(B) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

15.5 NAFTA Admissions.

- (a) General. The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. Chapter 16 of NAFTA pertains to Canadian and Mexican citizens seeking classification as one of four types of business persons:

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- **B-1** temporary visitors for business under section 101(a)(15)(B) of the Act;
- **E-1 or E-2** treaty traders and treaty investors under section 101(a)(15)(E) of the Act;
- **L-1** intracompany transferees under section 101(a)(15)(L) of the Act; and
- **TN** professional level employees under section 214(e) of the Act.

The NAFTA is an historic accord governing the largest trilateral trade relationship in the world and covers trade in goods, services, and investments. NAFTA facilitates the movement of U.S., Canadian, and Mexican business persons across each country's border through streamlined procedures. The NAFTA maintains the provisions of existing laws that ensure border security and protect indigenous labor and permanent employment. Further, NAFTA fully protects the ability of state governments to require that Canadians and Mexicans practicing a profession in the United States are fully licensed under state law to do so. Current U.S. law and practice relating to exclusion and deportation of aliens applies unchanged to all business persons seeking temporary entry under the provisions of Chapter 16 of the NAFTA.

The immigration-related provisions of NAFTA are similar to those contained in the United States-Canada Free-Trade Agreement (CFTA), which was suspended with the entry into force of NAFTA. The NAFTA is an international agreement subject to scrutiny by the public, the media, other governments and the Temporary Entry Working Group. INS inspectors must maintain the highest standards of objectivity, courtesy and professionalism when processing applicants for admission.

(Revised IN99-28)

(b) Definitions.

(1) A **business person** as defined in NAFTA means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

(2) **Business activities at a professional level** means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

(3) **Temporary entry** as used in NAFTA means entry without the intent to establish permanent residence.

(4) To **engage in business activities at a professional level** means the performance of prearranged business activities for a U.S. entity, including an individual. It does not allow for entry in TN status of those business persons who are seeking entry to engage in

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self-employment.

(c) B-1 Classification: Business Visitor.

(1) Qualifications. A NAFTA B-1 must meet the same eligibility requirements, described in Chapter 15.4, as any other B-1. All persons seeking admission into the United States under this category, whether they engage in the activities listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA or other legitimate business activities, must meet all the general standards described above. These standards have been written to be flexible and to accommodate normal legitimate business activities [See Appendix 15-3 of this manual.].

Appendix 1603.A.1 to Annex 1603 of the NAFTA is a list of business activities representative of a complete business cycle in which a B-1 business visitor seeking entry under the NAFTA may engage. Appendix 1603.A.1 is not an exhaustive list. Nothing precludes a citizen of Mexico or Canada from seeking entry to engage in traditional B-1 activities which are not included within Appendix 1603.A.1, provided they meet all requirements for entry in such states, including restrictions on sources of remuneration.

The activities contained in Appendix 1603.A.1 include:

(A) Research and design. Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) Growth, manufacture and production. Harvester-owner supervising a harvesting crew admitted under applicable law. Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another party.

(C) Marketing. Market researchers and analysts conducting independent research or analysis for an enterprise located in the territory of another Party. Trade fair and promotional personnel attending a trade convention.

(D) Sales. Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

(E) Distribution. Transportation operations transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of another Party. With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada. With respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States. (It should be noted that, during the

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course of negotiations relating to NAFTA immigration provisions, Mexico decided not to be a Party to the language involving temporary entry of customs brokers into the signatory countries. Therefore, Mexican citizen customs brokers are not referenced in Appendix 1603.A.1. A citizen of Mexico is not precluded, however, from seeking entry into the United States in B-1 status to perform the functions of a customs broker provided he or she meets all existing requirements for B-1 classification.) Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

(F) After-sales services. Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement. The language concerning the life of a renewable service contract must have been included in clear and definitive terms in the original contract at the point of sale. Nothing under NAFTA precludes third party contracts for after-sales service providing the third party agreement was contracted at the time of sale.

(G) General service. Professionals engaging in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, but receiving no salary or other remuneration from a U.S. source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay). Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party. Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party. Public relations and advertising personnel consulting with business associates, or attending or participating in conventions. Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. The tour may begin in the United States, but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such cases, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance. Tour bus operators entering the territory of another Party with a group of passengers on a bus tour that has begun in, will return to, the territory of another Party to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party or with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with the group for transportation to the territory of another Party. Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(2) Terms of Admission. A citizen of Canada need not apply for a B-1 nonimmigrant visa, but is not precluded from doing so. A citizen of Mexico must apply for a B-1 visa at a U.S.

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embassy or consulate abroad. A citizen of Canada or Mexico will be admitted into the United States at the discretion of the inspecting officer for the period necessary to engage in the intended activities, not to exceed 1 year. The alien may apply to extend his or her stay by filing an Application to Extend/Change Status on Form I-539 with the appropriate Service office. Extensions of stay are granted in increments of not more than 6 months.

There is a \$6.00 fee at all land border ports-of-entry to process a Form I-94 for an applicant's admission into the United States.

(3) Spouses and Children. The spouse and children of a business person may accompany or follow to join the B-1 business visitor in B-2 classification if they otherwise meet the general requirements for temporary entry of visitors for pleasure. Such dependents may not work in the U.S. without obtaining a change of status, but may attend school, if incident to status.

(d) E Classification as a Treaty Trader or Treaty Investor.

(1) Qualifications. Section B of Annex 1603 of the NAFTA provides for the temporary entry of Canadian and Mexican citizens as treaty traders and treaty investors. This section required no changes to existing law and practice under section 101(a)(15)(E) of the Act, other than to authorize citizens of Canada and Mexico to apply for treaty trader (E-1) or treaty investor (E-2) status pursuant to the NAFTA.

A treaty trader is a business person who is coming to the U.S. solely to carry on substantial trade, principally between the U.S. and Canada, if the trader is a citizen of Canada, or between the U.S. and Mexico, if the trader is a citizen of Mexico.

A treaty investor is a business person who is coming to the United States solely to develop and direct the operations of an enterprise in which he or she has invested, or of an enterprise in which he or she is actively in the process of investing, a substantial amount of capital.

Immigration officers must familiarize themselves with the definition of the E classification in §101(a)(15)(E) of the Act and the regulations at 8 CFR 214.2(e) and 22 CFR 41.51.

(A) Treaty Traders. NAFTA business persons applying for the E-1 visa as a Treaty Trader must meet the following requirements.

- Citizenship. The trader, individual or entity, must possess citizenship of Canada or Mexico. In the case of an entity, at least 50% of that business must be owned by Canadian citizens or Mexican citizens.
- Trade. There must be an international exchange of a good or service, including title to that trade item, for consideration between the United States and either Canada or Mexico.

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- Substantial Trade. The volume of trade must constitute a continuous flow of trade items involving numerous transactions between the United States and Canada or Mexico.
- Trade Linked to Citizenship. Trade is principally between the U.S. and Canada, if the trader possesses Canadian citizenship, or between the U.S. and Mexico, if the trader possesses Mexican citizenship. At least 50% of the international trade (as contrasted to domestic trade) of the trading entity must be conducted between the U.S. and Canada, if the trader possesses Canadian citizenship, or between the U.S. and Mexico, if the trader possesses Mexican citizenship.

(B) Treaty Investors. NAFTA business persons applying for the E-2 visa as a Treaty Investor must meet the following requirements.

- Citizenship. The investor, individual or entity, must possess citizenship of Canada or Mexico. In the case of an entity, at least 50% of that business must be owned either by Canadian citizens or by Mexican citizens.
- Investment Must Occur or Be in Process. The investor has invested or is actively in the process of investing. The investor may invest in an established business or create a business. Being in the process of investing requires the irrevocable commitment of funds.
- The Investment Must Be Real. The enterprise is a real and operating commercial enterprise. A dormant or paper enterprise does not qualify.
- The Investment Must Be Substantial. A substantial amount of capital constitutes that amount that is substantial in the proportional sense pursuant to a proportionality test, that is, an inverted sliding scale in which the lower the total cost of the enterprise, the higher, proportionally, the investment must be. The overall cost of the enterprise is compared with the amount of personal funds and assets invested by the investor. Only loans guaranteed by personal assets qualify as actual investment by the treaty investor.

The business shall not be marginal, solely for the purpose of earning a living. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a living for the treaty investor and his or her family.

- The Investor Must Be Developing and Directing the Enterprise. An investor develops and directs the business by owning at least 50% of the enterprise or by a combination involving ownership and possession of management responsibility, by controlling stock by proxy, etc.

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(C) Qualifying Employees for E-1 or E-2 Visa Classification. Employees of Treaty Traders and Treaty Investors also may apply for an E-1 or E-2, if they meet the following requirements.

- Citizenship. The employee must possess the same citizenship as the trader or investor employer.
- Position. The employee is destined to an executive/supervisory position, possessing the authority and responsibility to make decisions which will set the direction of the enterprise; or the employee, if employed in a minor capacity, has special qualifications that make the services to be rendered essential to the successful or efficient operation of the enterprise. The essential employee must possess special skills including skills which are unique to operations in the U.S. Such employees are highly and specially skilled.
- Temporary. All persons must indicate the intent to depart the U.S. upon termination of status, ceasing business operations or sale of business, etc.

(2) Terms of Admission. An alien seeking admission as a treaty trader or treaty investor under the NAFTA as an E-1 or E-2 must be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under section 101(a)(15)(E) of the Act. Both Canadian and Mexican citizens must apply at a U.S. embassy or consulate for the issuance of an "E" nonimmigrant visa and pay any visa fee. A supplemental Form OF-156E must be submitted with pertinent documentation to the consular officer. Upon admission, issue both Canadian and Mexican treaty traders and treaty investors and their dependents a Form I-94, endorsed in the same manner as other E-1 and E-2 nonimmigrants. The classification code E-1 or E-2 will be marked clearly on the I-94. The I-94 with the E-1 or E-2 notation is the employment authorization documentation for the treaty trader or treaty investor. The Form I-94 is presented to the Social Security Administration for purposes of applying for a social security number. Periods of initial admission and extension are the same as for other E-1 and E-2 nonimmigrants.

(3) Spouse and Dependent Children. The spouse and children of a treaty trader or treaty investor may accompany or follow to join the E-1 or E-2 business person if they otherwise meet the general requirements for temporary entry. There is no requirement that the spouse and children be Canadian or Mexican citizens. Such dependents may not work in the U.S. without obtaining a change of status, but may attend school, if incident to status. As with other E-1 and E-2 nonimmigrant dependents, their I-94 visa symbol is the same as the principal's; endorsements are the same as for other E dependents.

(e) L Classification as an Intracompany Transferee.

(1) Qualifications. The designated nonimmigrant classification for the intracompany transferee who enters the U.S. under the NAFTA is L-1. The L-1 classification has been part of the Act since the 1970's through section 101(a)(15)(L). The U.S. has committed to allow citizens of Canada and Mexico who meet the qualifications of the current L-1

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classification to enter the U.S. as intracompany transferees while the NAFTA is in force. Immigration officers must familiarize themselves with definition of the L classification at section 101(a)(15)(L) of the Act and regulations at 8 CFR 214.2(l). See L-1 notes in Chapter 15.4 and *Adjudicator's Field Manual*, Chapter 32.

The NAFTA intracompany transferee must qualify under the existing requirements for L classification, including:

- Citizenship. To qualify for the NAFTA intracompany transferee classification, the applicant must establish Canadian or Mexican citizenship.
- Qualifying Capacity. The applicant must qualify in a capacity that is managerial, executive, or one involving specialized knowledge.
- Qualifying Entity. The applicant must be seeking entry to work for an entity in the U.S. which is the parent, branch, affiliate, or subsidiary of the entity in the foreign country.
- Qualifying Past Employment. The applicant must have been employed continuously for 1 year in the previous past 3 years with the qualifying entity abroad in a qualifying capacity.

(2) Terms of Admission. A petition must be filed in the applicant's behalf to accord the alien classification as an L-1. The petition must be submitted by the qualifying entity to the Service on Form I-129, Petition for Temporary Worker, in accordance with the instructions for that form. The Service will provide the NAFTA intracompany transferee and dependents with Forms I-94 at the time of admission, endorsed in the same manner as other class L admissions. The I-94 is the employment authorization document for the L-1 and may be presented to the Social Security Administration for the purpose of applying for a social security number. Periods of admission and extension for NAFTA L aliens are the same as for other L nonimmigrants. (Revised IN99-28)

(A) Citizens of Canada. A citizen of Canada is not required to, but may, obtain a nonimmigrant visa. The applicant must establish Canadian citizenship. The I-129 petition may be filed (in duplicate) by the U.S. or foreign employer in advance of entry or in conjunction with an application for admission. If the alien wishes to file in advance, the petition must be submitted to the appropriate Service Center and should be submitted at least 30 days in advance of the expected date of entry. The applicant must present evidence of the approved petition (Form I-797, Notice of Approval) at the time of application for admission. If the petition is filed in conjunction with an application for admission, such filing must be made in person with an immigration officer at a Class A port-of-entry located on the US-Canada land border or at an U.S. pre-clearance/ pre-flight station in Canada. Petitions may not be submitted to a port-of-entry in advance.

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The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner and all documentation and the appropriate filing fee must accompany the petition. The port of entry may accept appointments but the use of appointments may not preclude an applicant who did not make an appointment from being processed at the time of his/her application for admission. The I-129 petition is complex and requires sufficient time for review by the processing officer. The burden of processing time rests with the applicant not with the Service. Applicants for admission filing I-129 petitions at pre-flight locations in Canada must allow sufficient time prior to the departure of their flight for processing. (Revised IN99-28)

(B) Citizens of Mexico. A citizen of Mexico must apply for an L visa at an American consulate. At the port-of-entry, the applicant must present a valid Mexican passport with their L-1 visa.

(3) Spouses and Dependent Children. Spouses and dependent children of intracompany transferees may accompany or follow to join the L-1 principal if they otherwise meet the general immigration requirements for temporary entry. L-2 is the designated classification for both spouse and dependent children of intracompany transferees. There is no requirement that the spouse and dependent children be citizens of Canada or Mexico. L-2 dependents who are citizens of Canada are not required to obtain an L-2 visa but may seek visa issuance if desired. L-2 dependents who are citizens of Mexico or other countries generally are required to seek visa issuance. L-2's may not work in the United States. L-2's may attend school while in the United States incident to their temporary stay.

(f) TN Classification as a Professional.

(1) General.

(A) Background. The NAFTA professional is unique to the North American Free Trade Agreement (the NAFTA). The classification is not found in general immigration provisions in section 101(a)(15) of the INA; rather, it is included in section 214(e) of the INA. Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the U.S. as a professional may be admitted to the U.S. under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry into the U.S. [See Appendix 15-4 of this manual for Annex 1603, Appendix 1603.D.1.] [For regulations relating to NAFTA TN classification, refer to 8 CFR 214.6.].

The NAFTA professional is modeled on the professional category in the

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predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ only slightly for Canadian citizen applicants and Mexican citizen applicants. Following implementation of the NAFTA, there was an annual numerical limitation of 5,500 on the number of Mexican citizens entering the U.S. as TN professionals. In order to administer the cap, a Form I-129 petition and a labor condition application were required. The numerical limitation and petition requirement were eliminated effective January 1, 2004.

As with the CFTA, admission as a TN under section 214(e) of the INA does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under section 101(a)(15)(H)(i)(b) or section 203(b)(3) of the INA. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed. Section D of Annex 1603 is limited to the entry of a citizen of a Party country seeking to render professional-level services for an entity in another Party country.

Self-employment also clearly conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action, which states, at page 178, "Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed." In this regard, Section B of Annex 1603, which deals with "traders and investors," establishes the appropriate category of temporary entry for a citizen of a Party country seeking to develop and direct investment operations in another Party country. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the U.S., therefore, must seek classification under section 101(a)(15)(E) of the INA.

Although the issue of self-employment was never specifically addressed under the regulations promulgated by the INS pursuant to the CFTA Implementation Act, the bar on establishment of a business or practice in which the professional will be self-employed is consistent with the intent of the U.S. and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar merely clarifies existing law.

Note that the bar on establishment of a business or practice in which the Canadian or Mexican citizen will be self-employed is in no way intended to preclude a Canadian or Mexican citizen who is self-employed abroad from seeking entry to the U.S. pursuant to a pre-arranged agreement with an enterprise owned by a person or entity other than him/herself located in the U.S.

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On the other hand, a Canadian or Mexican citizen is precluded from entering this country in TN classification for the purpose of rendering pre-arranged services for a U.S. corporation or entity of which he or she is the sole or controlling shareholder or owner or over which he or she holds de facto control.

(B) Pre-arranged Professional Services. In order to obtain "TN" classification, a business person, including one who is self-employed, must be seeking entry to render pre-arranged professional services to an individual or an enterprise. If the business activities are to be rendered to an individual or an enterprise, the enterprise must be substantively separate from the business person seeking entry. Moreover, the business activities must not include establishment of a business or practice or any other type of activity in which the business person will be self-employed in the United States.

As used above, to constitute pre-arranged professional services, there must exist a formal arrangement to render professional service to an individual or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the business person or the business person's employer and an individual or an enterprise in the United States.

(C) Enterprise for Which the Professional Activities are to be Performed in the United States. The enterprise in the United States for which the business activities are to be performed can take any legal form (as defined in Article 201 of the NAFTA), that is, "any entity entirely constituted or organized under applicable law, whether or not for profit, and whether privately- owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association."

(D) Substantively Separate from the Business Person Seeking Entry as NAFTA Professional. A business person is ineligible for classification as a NAFTA Professional if the enterprise in the United States offering a contract or employment to the business person seeking entry is a sole proprietorship operated by that business person. Moreover, even if the receiving enterprise is legally distinct from the business person, such as a corporation having a separate legal existence, entry as a NAFTA Professional must be refused if the receiving enterprise is substantially controlled by that business person.

(E) Substantial Control. Whether the business person "substantially controls" the U.S. enterprise will depend on the specific facts of each case. The following factors, among others, are relevant in determining what constitutes substantial control:

- whether the applicant has established the receiving enterprise;
- whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
- whether the applicant is the sole or primary owner of the business; or

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- whether the applicant is the sole or primary recipient of income of the business.

(F) Establishment of a Business in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

- incorporation of a company in which the business person will be self-employed;
- initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
- responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

- responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
- establishing business premises from which to deliver pre-arranged service to clients.

(Paragraph (f)(1) revised IN98-06)

(2) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. In the case of a Canadian or Mexican citizen whose occupation does not appear on Appendix 1603.D.1 or who does not meet the transparent criteria specified, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a business person to conduct seminars which do not constitute the performance of prearranged activities for a U.S. entity.

The terms "state/provincial license" and "state/provincial/federal license" means any

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document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

A "**Post Secondary Diploma**" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States. A "**Post Secondary Certificate**" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) A business person in the category of "**Scientific Technician/Technologist**" must possess: (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics, and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research. A scientific technician/technologist does not generally have a baccalaureate degree. The following principles will be used to evaluate the admissibility of scientific technician/technologist applicants.

(i) Individuals for whom scientific technicians/ technologists wish to provide direct support must qualify as a professional in their own right in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

(ii) A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist (ST/T). The offer must demonstrate that the work of the ST/T will be *inter-related with* that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

(iii) The ST/T's theoretical knowledge should generally have been acquired through the *successful completion of at least two years of training in a relevant educational program*. Such training may be documented by presentation of a diploma, a certificate, *or a transcript accompanied by evidence of relevant work experience*.

(iv) U.S. authorities will rely on the Department of Labor's Occupational Outlook Handbook to establish whether proposed job functions are consistent

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with those of a scientific or engineering technician or technologist. ST/Ts should not be admitted to perform job functions that are primarily associated with other job titles.

(v) Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution, etc.)

(B) A business person in the category of "**Medical Laboratory Technologist** (Canada) **Medical Technologist** (Mexico and the United States)" must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

(C) Foreign medical school graduates seeking temporary entry in the category of "**Physician (teaching or research only)**" may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will be incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) **Registered Nurses**. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted, the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Admission of nurses should not be limited to the expiration date of either document. In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health nurses, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit registered nurses and approve applications for extension of stay and/or change of status subject to the following conditions (Revised by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would

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ordinarily permit the alien's admission for a longer period;

- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(E) **Sylviculturists and foresters** plan and supervise the growing, protection, and harvesting of trees. **Range managers** manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

(F) **Disaster relief insurance claims adjusters** must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds \$5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

(G) **Management consultants** provide services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is a U.S. management consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The **computer systems analyst** category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems which meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

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(I) **Hotel Managers** must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) **Animal and Plant Breeders** breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(3) **Qualifications.** The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).
- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she will be self-employed.
- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.
- Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

Note: In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. For example, an architect must be licensed to sign architectural plans, etc. but not all professional-level duties of an architect require licensure (an architect can work on development of plans but be precluded from signing the plans).

Similarly, a dentist requires a license in the U.S. to practice dentistry but if a Canadian citizen is coming to the U.S. as a TN to give a seminar on dentistry, no U.S. license would be necessary. The Canadian may establish qualifications as a dentist by showing a provincial license or a D.D.S., D.M.D., Doctor en Odontologia en Cirugia

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Dental.

This is analogous to the lawyer who seeks admission as a TN to offer professional-level legal advice about Canadian law but who is not going to practice before any state bar in the U.S.-- this Canadian citizen would need only to establish qualification as a lawyer-- a J.D. or provincial bar membership could suffice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(Revised IN99-28)

(4) Application Process.

(A) Citizens of Canada. A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at U.S. Class A ports-of-entry, airports handling international flights, or at pre-clearance/pre-flight stations in Canada. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport, citizenship card, or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

An application for entry as a TN professional is an application for admission. It must be made, in person, to an immigration officer at the same time the individual is applying for admission to the U.S. There is no written application for entry as a TN professional. No prior petition, labor certification, or prior approval may be required for Canadian citizens applying for admission to the U.S. in TN status. Advance adjudication of a TN applicant prior to the actual application for admission is not appropriate. Prior approval procedures are not permissible under Annex 1603.D.2(a) of the NAFTA. The applicant must be interviewed regarding his or her qualifications for the profession. Documentation from the prospective employer in the U.S., or from the foreign employer, must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1.

(B) Citizens of Mexico. A citizen of Mexico may apply for entry to the U.S. as a
I-LINK

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NAFTA professional at U.S. Class A land border ports-of-entry, airports handling international flights, or at a pre-clearance/pre-flight station in Canada. However, a citizen of Mexico must be in possession of a TN nonimmigrant visa issued by an U.S. consulate and present a valid Mexican passport.

Upon application for a visa at a U.S. consulate or embassy, a citizen of Mexico must present the following:

- Evidence of Mexican citizenship;
- Evidence of an offer of employment to include a statement of the activity listed in Appendix 1603.D.1 in which the applicant will be engaging, a full description of the nature of the duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1.

(5) Terms of Initial Admission.

(A) Canadians. A Canadian citizen who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently \$50.00 U.S.) upon admission. Issue the applicant a fee receipt (Form G-211, Form G-711, or Form I-797) and a multiple entry Form I-94 showing admission in the classification TN for the period requested not to exceed 1 year. Annotate the occupation in block #18 on the back of the arrival portion of the I-94.

(B) Mexicans. A Mexican citizen seeking admission in TN classification is required to present a valid TN visa issued by a U.S. consulate. Admit a Mexican TN for the period requested, not to exceed 1 year, and issue a multiple entry Form I-94 showing admission classification as TN. Annotate the occupation in block #18 on the back of the arrival portion of the I-94. (Note: Only citizens of Canada pay the TN fee at the port-of-entry. This fee is not charged to Mexican citizens when applying for TN classification at the port-of-entry because fees are charged for issuance of the TN nonimmigrant visa.)

At the time of application for admission, the citizen of Canada or Mexico will be subject to inspection to determine the applicability of section 214(b) of the Act (presumption of immigrant intent) to the applicant.

(6) Procedures for Readmission. A citizen of Canada or Mexico who is eligible for TN classification may be readmitted to the U.S. for the remainder of the period authorized on his or her Form I-94, without presentation of the letter or supporting

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documentation described above, provided that the original intended business activities and employer(s) have not changed. If the applicant is no longer in possession of a valid, unexpired Form I-94, a citizen of Canada must present substantiating evidence. Substantiating evidence may be in the form of a fee receipt for admission as a TN, a previously issued TN admission stamp in a passport, and a confirming letter from the U.S. employer(s). A Mexican citizen may be readmitted upon presentation of a valid TN visa and evidence of prior admission, which may include, but is not limited to, an INS fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, issue a new multiple entry Form I-94.

(7) Extension of Stay.

(A) Form I-129 Application Process. A citizen of Canada or Mexico admitted pursuant to NAFTA may seek an extension of stay as a TN through the filing of a Form I-129 by the U.S. employer or U.S. entity (in the case of a TN who has a foreign employer) with the Nebraska Service Center. No Department of Labor certification requirements apply to an alien in TN status who is seeking to extend that status as the Form I-129 is considered an application for extension of stay rather than a petition in this case. The applicant must be in the U.S. at the time of filing the extension request. Provision is made for port-of-entry or consular notification should the applicant depart the U.S. during the pendency of the application. An extension may be granted for up to 1 year.

(B) Departure and Return. A citizen of Canada or Mexico is not precluded from departing the U.S. and applying for admission with documentation from a U.S. employer (or foreign employer, in the case of an alien who is seeking to provide prearranged services at a professional level to a U.S. entity) which specifies that the applicant will be employed in the U.S. for an additional period of time. The evidentiary requirements outlined above in paragraph (f)(4) must be met by the applicant and, in the case of a Canadian citizen, the prescribed fee must be remitted upon admission. In the case of a Mexican citizen, the passport and visa requirements also apply.

(C) Limitations. At the present time, there is no specified upper limit on the number of years a citizen of Canada or Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Canada or Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Canada or Mexico who is currently in the U.S. in another valid classification is not precluded from

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requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

(8) Request for Change/Additions of U.S. Employers. A Canadian or Mexican citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Nebraska Service Center. All documentary requirements pertaining to a citizen of Canada or a citizen of Mexico outlined above must be met. Employment with a different or with an additional employer is not authorized prior to approval of the application.

Alternatively, the Canadian citizen may depart the U.S. and apply for reentry for the purpose of obtaining additional employment authorization with a new or additional employer. Documentary requirements outlined above in paragraph (f)(4)(A) must be met and the prescribed fee must be remitted upon readmission.

No action is required by a Canadian or Mexican citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

(9) Spouse and Unmarried Minor Children. The spouse and unmarried minor children, who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These aliens are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. There is no requirement that the TD dependent be a citizen of Canada or Mexico.

No fee is required for admission of dependents in TD status (except the fee for the Form I-94) and they are to be issued multiple entry Forms I-94.

A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incidental to status.

(10) Denial. In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the requirements for admission pursuant to the NAFTA, Appendix 1603.D.1, he/she should normally be offered the opportunity to withdraw his/her application for admission. If the inspector believes that the alien is inadmissible under section 212(a)(7)(A) (intending immigrant) or section 212(a)(6)(C) of the Act (seeking

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admission by fraud or willful and material misrepresentation) and the alien does not wish to withdraw his/her application for admission, the inspector should place the alien into an expedited removal proceeding.

(Revised IN03-40)

15.6 Transit without Visa (TWOV) Admissions.

(a) General description. An alien in immediate and continuous transit through the U.S. without a visa may be admitted under certain restrictions. Admission procedures are significantly different than for other nonimmigrants. Only a carrier signatory to a TWOV agreement may bring a TWOV applicant to the U.S., and only to specific ports-of-entry. TWOV agreements are provided for by section 233 of the Act and discussed in Chapter 42. Ports-of-entry for TWOV passengers are listed in 8 CFR 214.2(c). The list of carriers with TWOV agreements is contained in Appendix 42.1. Aliens of certain nationalities are only eligible for limited TWOV privileges as specified in 8 CFR 212.1(f)(2). Citizens, or in some instances residents, of certain countries are barred from TWOV privileges entirely, as specified in 8 CFR 212.1(f)(3). TWOV carriers are liable for "liquidated damages" whenever an arriving TWOV passenger fails to depart as scheduled. Liquidated damages procedures are discussed in Chapter 43.

(b) Documents required. TWOV applicants are exempt passport and visa valid for entry into the U.S., but must be in possession of a travel document or documents establishing his/her identity and nationality and ability (including any required visa) to enter the country to which destined, other than the U.S. [See 8 CFR 212.1(f)(1).]. Each TWOV passenger must have a confirmed transportation ticket to depart from the U.S. within 8 hours or on the first available transportation. A maximum of two stopovers en route is permitted.

(c) Processing procedures. Each arriving TWOV passenger should present a blue I-94T along with other required documents stated above. Enter the appropriate carrier arrival and departure information including the departure ticket number [REDACTED] in the shaded blocks on the lower front of the arrival portion of I-94T. It is critical that all information on the I-94T be complete, correct and legible, since the form is the basis on which the Service can assess damages in the event the passenger fails to depart. Staple the departure I-94 to the outbound ticket coupon and retain the arrival I-94 at the port. Stamp the passport with the admission stamp and endorse it "TWOV". Once the admission process is complete, turn the passenger and documents over to the arrival carrier, in accordance with local port procedures.

(d) Processing Ineligible and Mala Fide TWOV Applicants; TWOV Abscondee. If you determine a TWOV applicant is technically ineligible for that classification or is not a bona-fide transit passenger, first determine if the alien will be permitted to leave on his or her own recognizance, or remain in custody until departure. Contact the airline to arrange for a departure flight. If the alien is to be released, prepare Form I-160 and a regular I-94, endorsed with the parole stamp and departure information. Complete Form I-259 and serve it on the carrier. Institute fine proceedings, if the alien was statutorily ineligible for TWOV status.

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If the alien is found to be a mala-fide TWOV applicant or will not be released, prepare an I-160 and I-94 and endorse the admission block of the I-94: "I-259 served on (airline) to remove alien to (port) via (flight number) on (flight date)". Endorse the reverse of the I-94: "Ineligible TWOV." Prepare and serve an I-259 on the carrier to effect removal.

If a TWOV abscondee is reported, follow the procedures described in Chapter 43.6. If a TWOV applicant absconds after service of an I-259, report a violation of section 241(d) of the Act, using Form I-849 [See Chapters 43.3(a)(5)(E) and 43.6.].

(e) Special notes.

(1) Crew members. An alien crewmember coming to join a vessel admitted as TWOV must have a D visa and a letter from the shipping company or agent responsible for the vessel.

(2) Delayed departure. If a TWOV passenger cannot depart as scheduled due to circumstances beyond his or her control, such as aircraft mechanical problems or weather, the inspector must locate the arrival I-94T, destroy both portions and execute a new I-94T with the revised departure data.



(3) Deportees. An alien being deported from another country, through the U.S., should not be processed as a TWOV. Use parole procedures.

(4) TWOV to Canada. Since a large segment of TWOV passengers are destined to Canada, the list of countries whose nationals must have a visa to enter Canada is included in Appendix 15-5. Except for TWOV applicants who are joining a vessel in Canada as a crewmember or who are leaving the U.S. as a crewmember on a vessel destined to Canada, nationals of countries on this list must have a Canadian visa in order to be admitted as TWOV passengers.

(5) Missed departure. If an TWOV applicant has already missed his or her scheduled departure at the time of application for admission, or if the departure is scheduled via a different mode of transportation, refer the applicant to secondary for confirmation of departure arrangements.

(6) Entry of TWOV passengers at ports not designated for TWOV admissions. There is one exception to the requirement that all TWOV passengers enter only at designated TWOV ports. An alien in transit from one part of contiguous territory to another part of the same contiguous territory may be admitted as TWOV if the applicant is otherwise admissible and satisfies all other TWOV requirements [See 8 CFR 214.2(c)(1).].

(7) Unescorted TWOV passengers. Although carriers are required to ensure the passage of TWOV passengers in accordance with the terms of TWOV admission, it is not Service policy to impose a fine under section 243 of the Act simply because a TWOV passenger

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appears for inspection unescorted. If a carrier repeatedly fails to take adequate safeguards with TWOV passengers, report the matter to Headquarters, Inspections.

(8) Hong Kong residents. TWOV restrictions applicable to PRC nationals pursuant to 8 CFR 212.1(f)(2) do not apply to holders of HKSAR passports.

15.7 Visa Waiver Program (VWP). (Revised IN01-04)

(a) General Description. In 1986, the Immigration Reform and Control Act (IRCA) incorporated the Visa Waiver Program into the Immigration and Nationality Act (Act). The pilot program became effective on July 1, 1988. On October 30, 2000, the Visa Waiver Permanent Program Act made the pilot program permanent. The Visa Waiver Program (VWP) permits nationals from designated countries (listed in 8 CFR 217.2(a)) to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a U.S. nonimmigrant visa (USNIV). In exchange, VWP applicants waive rights to proceedings before an Immigration Judge (IJ), unless they make an asylum application. Only carriers who have entered into an agreement with the Immigration and Naturalization Service (INS) on the Visa Waiver Program Carrier Agreement, Form I-775, may transport VWP applicants making their initial admission at air or sea ports-of-entry (POEs). The adjudication process for VWP carrier agreements is discussed in Chapter 42.3, and new regulations will be developed to incorporate legislative revisions to the definition of "carrier." A list of carriers signatory to the VWP is included on the National Fines Office (NFO) Bulletin Board (contained in cc: mail). The NFO provides monthly updates to the signatory carrier list on the NFO Bulletin Board. An updated signatory carrier list may also be obtained from the NFO by calling (202) 305-7018.

(b) VWP Applicants for Admission

(1) Documentary Requirements. A VWP applicant must have a passport valid for 6 months beyond the period of intended stay, or essentially 9 months (90 days + 6 months). If the country is on the Department of State's (DOS) 6-month list extending the validity of certain foreign passports, then the extra 6-month validity is assumed, although not all VWP countries are on the list. Refer to Appendix 15-2 for the list of countries from DOS's Foreign Affairs Manual, which is updated periodically. Additionally, a round-trip ticket or the equivalent as defined in 8 CFR 217.2(a) and a completed Arrival/Departure Form I-94W are required. An alien with an expired passport is ineligible for VWP admission. In the event a waiver is granted to overcome inadmissibility, the waiver should include both the passport and appropriate nonimmigrant visa grounds in section 212(a)(7)(B)(I) and (II) of the Act.

(2) Nonimmigrant Visa vs. VWP. Applicants presenting themselves for admission

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under the VWP, but who have valid, unexpired B-1/B-2 visas in their passports, are not to be considered for admission as VWP applicants, regardless of whether they present completed Form I-94Ws or not. The VWP is intended for applicants without USNIVs. The B-1/B-2 visas take precedence over any application made under the VWP.

(3) No Expedited Removal for VWP Applicants. See *In Re Suseenthara Kanagasundram*, Interim Dec. 3407 (BIA 1999); 8 CFR § 235.3(b)(1).

(c) Air and Sea POE Arrivals

(1) General. Applicants for initial admission under the VWP must arrive on commercial aircraft or vessels signatory to the VWP. Failure to do so will result in ineligibility for the applicants under the VWP and the imposition of fines for the carrier in accordance with section 273 of the Act and described further in Chapter 43.2, Administrative Fine Violations. These requirements do not apply in cases of readmission, which is discussed further in Chapter 15.7(i), Readmission after Departure to Contiguous Territory or Adjacent Islands.

(2) Processing Procedures

- No alien shall be admitted (or readmitted after departure to contiguous territory or an adjacent island) under the VWP unless his or her identity (i.e., name, date of birth, and passport number) has been checked using an automated electronic database containing information about the inadmissibility of aliens, and no such ground of inadmissibility has been found.
- An applicant for admission shall not be admitted under the VWP unless the alien convinces the examining immigration officer that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 of the Act.
- The conditions for admission are specified in section 217 of the Act and 8 CFR 217. All VWP admissions are for 90 days unless the applicant's passport is valid for a lesser period, in which case the period of admission would be until the expiration date of the passport for those countries on the 6-month list. In the cases of those countries not on the 6-month list, the applicants would not meet the documentary requirements in Chapter 15.7(b), Documentary Requirements, and would be inadmissible under the VWP.
- Verify that the carrier is signatory to the VWP. Inspection of the round-trip ticket or equivalent by the primary officer is not ordinarily required, but could be considered in part of the overall determination of admissibility.

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- Each applicant under the VWP shall have been issued, by the carrier prior to arrival, a Form I-94W to be completed and which must be signed by the applicant, or responsible adult if the applicant is a minor. Review the Form I-94W presented by the applicant to ensure it is complete and legible, that all questions have been answered and that the form has been signed.
- Business visitors applying under this program are admitted "WB" and visitors for pleasure are admitted "WT." Stamp the Form I-94W with the admission stamp, notate "WB" or "WT" as appropriate, and the date to which admitted (90 days from the admission date). Stamp the passport with the admission stamp, and enter the admission class. Staple the endorsed departure portion of the Form I-94W in the passport.

(3) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(d) Land Border POE Arrivals.

(1) General. The VWP now permits arrivals at land border POEs, although it permitted arrivals only at air and sea POEs at its inception.

(2) Processing Procedures.

- No alien shall be admitted (or readmitted after departure to contiguous territory or an adjacent island) under the VWP unless his or her identity (i.e., name, date of birth, and passport number) has been checked using an automated electronic database containing information about the inadmissibility of aliens, and no such ground of inadmissibility has been found.
- An applicant for admission shall not be admitted under the VWP unless the alien convinces the examining immigration officer that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 of the Act.
- The conditions for admission are specified in section 217 of the Act and 8 CFR 217. All VWP admissions are for 90 days unless the applicant's passport is valid for a lesser period, in which case the period of admission would be until the expiration date of the passport for those countries on the 6-month list. In the cases of those countries not on the 6-month list, the applicants would not meet the documentary requirements in Chapter 15.7(b), Documentary Requirements, and would be inadmissible under the VWP.
- The requirements for round-trip tickets and signatory carriers are not relevant, as

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there are no carriers involved. However, VWP applicants must satisfy the inspecting officer that they have the economic means to support themselves during the duration of their stay and the means to depart the U.S.

- The applicant must complete and sign the Form I-94W issued at the land border POE, usually in secondary inspection, and pay the land border fee as prescribed in 8 CFR 103.7(b)(1). Form I-94Ws issued at a land border POEs are normally issued for multiple entries, unless otherwise noted.
- Business visitors applying under this program are admitted "WB" and visitors for pleasure are admitted "WT." Stamp the Form I-94W with the admission stamp, notate "WB" or "WT" as appropriate, and the date to which admitted (90 days from the admission date). Stamp the passport with the admission stamp, and enter the admission class. Staple the endorsed departure portion of the Form I-94W in the passport.

(3) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(e) Alternative Inspections Systems.

(1) General. Port Passenger Accelerated Service System (PORTPASS), encompasses the following programs: Automated Permit Port (APP), Canadian Border Boat Landing Permit (I-68), Outlying Area Reporting Station (OARS), Remote Video Inspection Service (RVIS) and Videophone. Although not part of the INS' PORTPASS, applicants entering under the U.S. Customs Service's General Aviation Telephonic Entry (GATE) program would follow the same procedures for INS purposes.

(2) Processing Procedures.

- PORTPASS applicants must *first* apply for initial admission at a designated 24-hour staffed Class A POE, in order to comply with any enrollment processes and be issued a Form I-94W. (Alternative Inspections Systems are considered Class B POEs, and as such, do not have the capability to issue the requisite forms, among other requirements). Applicants attempting to make an *initial* entry via an Alternative Inspection System (Class B POE) are not eligible under the VWP. Only those applicants with the endorsed departure portion of the Form I-94W in their possession, obtained from a Class A POE, are eligible for *readmission* under the VWP at an Alternative Inspection System, Class B POE.
- Signatory carrier requirements do not apply for readmission under the VWP, in accordance with 8 CFR 217.3(b). It is imperative that VWP PORTPASS applicants maintain their status and have all the required documents in their

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possession when applying for admission via an Alternative Inspection System. Failure to do so will result in a refusal of admission under the VWP.

(3) Other Than VWP Applicants. Refer to Chapter 21.9 of the Inspectors Field Manual (IFM) for further information on Alternative Inspection Systems and inspections procedures for other applicants.

(f) Other Arrivals

(1) Transit. An alien in transit through the U.S. is eligible to apply for admission as a "WT" under the VWP in accordance with 8 CFR 217.2(d). Follow procedures set forth in Chapter 15.7(c), Air and Sea POE Arrivals, and Chapter 15.7(d), Land Border POE Arrivals.

(2) Crewmembers in Transit. Alien crewmembers traveling as "deadheading crew", and crewmembers with letters indicating they are joining a vessel docked in the U.S. are eligible for VWP admission as business visitors, "WB."

(3) Ferries. The INS, as well as other agencies in the maritime arena, considers ferries to fall in two categories, due to the unique nature of ferry operations:

(A) The first category is those ferries whose primary purpose is the transportation of passengers and/or vehicles providing a continuation of the highway from one side of the water to the other and which is offered as a service normally attributed to a bridge or tunnel. These ferry trips are typically quite short in duration. The INS considers these ferry operations an extension of land border inspections, and the signatory carrier requirements are not applicable. Applicants under the VWP who arrive on these ferries are subject to the issuance of Form I-94Ws and the collection of land border fees. Inspecting officers should follow the procedures described in Chapter 15.7(d), Land Border POE Arrivals.

(B) The second category is those ferries whose operations go beyond a quick trip normally attributed to a bridge or tunnel extending the highway from one side of the water to the other and are more like vessel operations. These ferry crossings are typically several hours in duration, some as long as 12-15 hours, and the INS considers them seaport inspections. Accordingly, these ferry companies *must* be signatory to the VWP, or be subject to the imposition of fines. Although carriers arriving from contiguous territory are currently exempt the impositions of fines, the passengers are *not* exempt from the requirement of arriving on a signatory carrier for initial admission under the VWP. Failure to do so renders the passengers inadmissible under the VWP, subject to refusal, or, for unforeseen emergencies, the issuance of 212(d)(4) waivers on Form I- 193

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and the collection of the appropriate fee. For additional information concerning the 212(d)(4) unforeseen emergency waiver, see paragraph (1)(A)(ii) of this Chapter.

(4) Other Vessels.

(A) Yachting Schools. These schools, or individual vessels as part of these schools, are not eligible for initial admissions under the VWP, as they are not considered commercial vessels in accordance with 8 CFR 217.2(a). Accordingly, they cannot be signatory to the VWP. However, they frequently have VWP nationals participating in their programs, which often include trips that go foreign. Readmission under the VWP might be a possibility if all other criteria are met. Refer to further discussion on readmission in Chapter 15.7(i).

(B) Cargo vessels. Refer to Chapter 23.3(e) of the IFM.

(5) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(g) Inadmissibility and Deportability. Aliens who attempt entry under the VWP, but are found inadmissible by the inspecting officer, are refused entry into the U.S. without further administrative hearing, unless they seek asylum. The port director, officer-in-charge, or an officer acting in that capacity, has the authority to order the refusal of a VWP applicant. Care must be exercised to ensure that refusals are handled fairly and are thoroughly documented, because, as a practical matter, the inspecting officer's decision is final. VWP applicants have waived their rights to administrative hearings and are not entitled to proceedings under section 240 of the Act. Aliens who have been admitted to the U.S. under the VWP and who have subsequently been determined to be removable, shall also be removed from the U.S. The following sections will clarify the distinctions and ramifications of this often- confusing terminology:

(1) Refusals vs. Removals. 8 CFR 217.4 distinguishes determination of inadmissibility/refusal of an arriving VWP applicant for admission at a POE from the determination of deportability/removal of an alien admitted under the VWP.

(A) Refusals/Inadmissibility.

(i) General. An alien refused admission under the VWP on or after October 30, 2000 must obtain a visa before again seeking admission into the United States. Section 217(g) of the Act addresses VWP refusals at POEs on or after October 30, 2000. Section 217(g) requires "that an alien denied admission under the VWP obtain a visa before again seeking admission into the United States." Visas: Passports and Visas Not Required for Certain Nonimmigrants—Visa Waiver Program, 67 Fed. Reg. 30546. Notwithstanding this requirement, a POE refusal of admission does not constitute a formal order of removal under the Act.

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If the alien has previously violated the terms of admission under the VWP or the predecessor Visa Waiver Pilot Program, even if the Service did not previously apprehend or formally remove the alien, he or she may not apply for admission under the VWP and will need a visa before returning to the United States. Section 217(a)(6) of the Act states that if an alien was previously admitted under the VWP or its predecessor pilot program, the alien must have complied with the conditions of any previous admission under the program.

(ii) Section 212(d)(4)(A) Waiver of Passport and/or Visa. A district director has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an *unforeseen emergency* prevented him or her from acquiring the appropriate passport or visa. See generally *Matter of LeFloch*, 13 I. & N. Dec. 251, 255-56 (BIA 1969) (212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); *Matter of V*, 8 I. & N. Dec. 485, 485-87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). For the purposes of this Chapter, the term "unforeseen emergency" as used in 8 CFR 212.1(g) means:

- an alien arriving for a medical emergency;
- an alien accompanying or following to join a person arriving for a medical emergency; or
- an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

In a case where a 212(d)(4)(A) is under consideration (only in those cases identified above), the alien should complete Form I-193 and remit the appropriate fee. Where a district director favorably adjudicates an application for a 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission stamp. The admitting officer shall also make the same notation on the reverse side of both the arrival and departure portion of Form I-94.

The 212(d)(4)(A) waiver provisions defining unforeseen emergency shall apply to all VWP country nationals who arrive in the United States without either a signed I-94W or a valid visa and who intend to apply for temporary admission as a nonimmigrant under section 101(a)(15) of the Act.

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An unforeseen emergency waiver would be inappropriate, for example, in the following scenario. A representative of a renowned horse show exhibition notifies a U.S. POE that 22 horse grooms who are nationals of VWP countries will arrive in the United States two days later, aboard a non-signatory VWP carrier, and without valid visas for the purpose of engaging in lawful B-1 horse grooming activities. If the horse grooms arrive later with valid passports, aboard a non-signatory VWP carrier, and lacking either signed I-94Ws or valid visas, each applicant for admission would be ineligible for the 212(d)(4)(A) waiver unless one of the conditions in paragraph (g)(ii) were met. If, instead, each alien presented a valid passport and signed the I-94W each applicant for admission would still be inadmissible because he or she would have arrived aboard a non-signatory VWP carrier without a valid visa.

(B) Removals/Deportability. 8 CFR 217.4(b) addresses VWP applicants admitted and subsequently removed/deported (this does not include those refused at POEs), and states that removal under this section is equivalent to removal under section 240. 8 CFR 217.2(b)(2) states that persons previously removed must apply for permission to reapply pursuant to section 212(a)(9)(A)(iii) of the Act and must secure a USNIV to be admitted to the U.S. as a nonimmigrant. Therefore, these applicants would need a USNIV, a possible waiver, and permission to reapply if attempting to enter prior to the ten (10) year bar under section 212(a)(9)(A)(ii)(I).

(2) Asylum Claims. Aliens who apply for admission under the VWP shall not be subject to expedited removal regardless of their true and correct nationality. See *In Re Suseenthera Kanagasundram*, Interim Dec. 3407, (BIA 1999); 8 CFR § 235.3(b)(1). Until the Service revises Title 8 of the Code of Federal Regulations, a VWP applicant who indicates an intention to apply for asylum shall be referred to an immigration judge using Form I-863. Refer to Chapter 15.7(g)(5), VWP Asylum Requests and Procedures.

Ensure the Form I-94W for a refused VWP applicant is completed and signed. If the alien declines to sign the Form I-94W, he/she is not considered a VWP applicant. In that case, follow procedures outlined in Chapter 17.6 or 17.15 as appropriate, for institution of removal proceedings. In addition, prepare a memorandum of facts for institution of fine proceedings against the carrier, as described in Chapter 43.3.

(3) VWP Refusal Procedures

- If the alien has signed the Form I-94W, open an "A" file and take a sworn statement on Form I-877 to establish inadmissibility.

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- Complete Form I-275, checking the box for VWP refusal and recording all information about the alien and the reasons for refusal. If the refusal is based on a violation of a previous admission under the VWP or the alien is otherwise inadmissible, forward a copy of the I-275 to the appropriate Consulate.
- Endorse the inside of the back cover of the passport with "8 CFR 217.4(a)(1)", the "A" file number, date and POE code.
- Endorse both portions of the Form I-94W "refused in accordance with INA section 217"; line stamp or enter the date, POE and the officer's stamp number. Also note the departure flight information and the reason for refusal (ground(s) of inadmissibility) in block 13 of the form.
- Provide the alien a copy of the sworn statement and a copy of the Form I-94W, free of reference to any lookout intercept.
- Prepare and serve Form I-259, Notice to Detain, Remove or Present Aliens, on the responsible carrier to remove the alien. Provide the carrier with the alien's return-trip tickets (if applicable), travel documents and the endorsed departure portion of the Form I-94W.
- Three sets of fingerprints should be collected on Form FD-258 (Blue), or on Form FD-249 (Red) if the refusal is based on fraud or criminal grounds. If the Automated Biometric Identification System (IDENT) is used, POEs will adjust this guidance accordingly. (A discussion of the IDENT program is contained in Appendix 45-1 of the *Special Agent's Field Manual*.)

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- Prepare a lookout in the National Automated Immigration Lookout System (NAILS) as described in Chapter 31.5, for the VWP refusal (lookout code VWR) and include any other lookout codes that may apply to the case. If an INS lookout already exists, do not create another lookout, and use the same "A" file number for the alien. Refer to Chapter 31.6, Lookout Intercepts, and follow procedures accordingly. The officer will essentially be attaching a message via the NAILS Message Function to the original lookout, providing additional information from the current intercept to the originator of the lookout.
- Forward the arrival portion of the Form I-94W for data entry.
- Photocopy the cover, data page and any other relevant passport pages, as well as any other relevant materials. Distribute copies of all these materials to the "A"

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