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## REQUEST FOR EVIDENCE

### Form I-129, Petition for a Nonimmigrant Worker E-2 Treaty Investor

You, (insert name of applicant/investor), filed Form I-129, Petition for a Nonimmigrant Worker, with U.S. Citizenship and Immigration Services (USCIS), seeking E-2 nonimmigrant classification. You have indicated on Form I-129 that you have invested in (insert name of enterprise or sole proprietorship) and you are applying to qualify yourself as a treaty investor. **We need additional information from you** in order to process your application and determine if you are eligible.

The E-2 classification may be granted to an individual who:

- Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living;
- Is seeking entry solely to develop and direct the enterprise; and
- Intends to depart the United States upon the expiration or termination of E-2 status.

While a detailed and probative statement or statements made without supporting documentation may be sufficient to establish a specific claim based on the facts presented, the statements made in the cover letter submitted with your application are insufficient and we need additional evidence. This request provides suggested additional evidence that you may submit to address each outstanding question we have based on what you have already submitted. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Please note that you are responsible for providing sufficient evidence to show you meet all requirements, were eligible for the requested benefit at the time you filed the Form I-129, and continue to remain eligible at this time. Whether the evidence you submit is sufficient to meet your burden of proof depends on the quality and probative value of the evidence submitted.

If you do not respond to this request for evidence, we may deny your petition.

We check all petitions and applications filed for this classification in our Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations requesting to employ foreign workers. For more information about this program, please visit our website at [www.uscis.gov/VIBE](http://www.uscis.gov/VIBE).

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**[DELETE IF NOT APPLICABLE]**

**Request for Translations**

**[NOTE TO ISO: Use this subsection only if you are requesting a specific English translation (with the required translator certifications) of a foreign language document submitted without one. DELETE this subsection if you are not requesting a specific English translation.]**

All foreign language documents must have a complete English translation to establish eligibility.

You submitted the following documents which contain a language other than English:

- [Officer must list the documents.]

-  
-  
-

In order for USCIS to consider the evidence, you must submit the English language translation(s) for the document(s) noted above. In addition, the translator must certify that:

- The translations are accurate and complete; and
- He or she is competent to translate from the foreign language into English.

**Supplement to Form I-129**

You have submitted an incomplete supplement to Form I-129. Submit a fully completed E-1/E-2 Classification Supplement to Form I-129.

**-OR-**

You have not submitted a supplement to Form I-129. Submit a fully completed E-1/E-2 Classification Supplement to Form I-129.

**General Requirements for E-2 Treaty Investor**

To qualify for E-2 classification, you must show that you:

- Intend to depart when your E-2 status ends or is terminated;
- Are a national or citizen of a country with which a qualifying treaty exists with the United States, or, of a country accorded treaty visa privileges by legislation;
- Have acquired investment capital through lawful means;
- Have invested or are actively in the process of investing a substantial amount of capital;
- Are seeking entry solely to and have the capacity to develop and direct the enterprise;
- Have invested or are actively in the process of investing in a bona fide enterprise in the United States; and
- Have invested or are actively in the process of investing in an enterprise that is not marginal.

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**Treaty Country Nationality.** You must be a national or citizen of a country with which a qualifying Treaty of Friendship, Commerce, or Navigation (or its equivalent) exists with the United States, or a national or citizen of a country to which Congress has accorded treaty visa privileges by specific legislation.

You must show that you are a national of a treaty country or of a country accorded treaty visa privileges by legislation. If you are in the United States, your country of nationality is determined by the passport you used when you were last admitted into the United States.

[NOTE TO ISO: If there has been a change of nationality since the applicant's last admission to the United States, please consult with counsel.]

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement ]

-

-

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement]

**-OR-**

You were last admitted into the United States using a passport issued by the government of [insert name of country]. This is not a country which [is covered by legislation permitting you to be classified as an E-2 nonimmigrant or shares a qualifying treaty with the United States].

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant]

- Documents showing that your request is supported by a relevant treaty or legislation. For this evidence:
  - The treaty must be between the United States and the country that issued you the passport you used upon your last admission to the United States; and
  - The U.S. Department of State must recognize the treaty as sufficient to

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grant E-2 classification to nationals of that country.

- If a treaty does not exist, there must be legislation according treaty visa privileges to the country that issued you the passport you used upon your last admission to the United States.
- A copy or printout of the Form I-94, Arrival-Departure Record, you received upon arrival in the United States; and
- Copies of your passport identification pages. This should include:
  - Your signature, photograph, and personal data;
  - Any relevant visa pages; and
  - Pages with relevant stamps showing admission into the United States.

**Your Investment**

**Source of Funds.** To qualify as a treaty investor, you must demonstrate how you obtained the funds or other assets that you have invested or are actively in the process of investing. Such evidence must demonstrate that the funds or other assets used to invest in the enterprise have not been obtained, directly or indirectly, through criminal activity. Please note that providing a statement describing the source of the funds will not be enough. Any statements you provide about the source of the funds used in the investment process should be accompanied with sufficient documentation.

You did not submit any evidence to satisfy this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant or do not apply]

- A detailed narrative that explains the origin of the investment funds and how they were applied to the current E-2 treaty investment enterprise.
- Evidence to show the origin of all funds used to pay for your investment and a legitimate path of funds, including copies of all original wire transfers from overseas, copies of cancelled checks (front & back), and copies of bank statements that have been certified

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by the bank.

- Your foreign business registration records and licenses.
- Your foreign tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns.
- Your domestic and/or foreign bank records including bank statements, evidence of transfer of funds, letters of credit, and/or any other evidence of domestic or foreign assets and accumulated income held by you that are the claimed sources of income used in your investment.
- Your personnel records, pay records, and/or retirement records, etc. that show the claimed sources of the income used in your investment.
- Property records that demonstrate your ownership and show any income derived from your property that are the claimed sources of income used in your investment.
- Loan or mortgage agreements, promissory notes, security agreements, and/or other evidence of borrowing which is your unsecured personal business capital or capital which is secured by your own assets other than those of the investment enterprise and for which you are personally and primarily liable.

**OFFICER INFORMATION ONLY – DELETE BEFORE COMPLETING RFE**

**The Office of Foreign Assets Control (OFAC)** states that licensing is required for all U.S. dollar clearing transactions directly involving Iran. **Note that dollar clearing transactions involving a third party and Iran may be permissible.** A license is required, however, in instances where the money has passed through a prohibited banking resource in Iran.

**OFFICER NOTE:** Only request an OFAC License if you have verified that the money in question has passed through a prohibited institution. For a list of these institutions, please visit: [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc\\_ifsr.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf)

**Investment.** You must show that the capital invested or being invested, including funds and other assets, is at risk in the commercial sense with the objective of generating a profit. The capital must be your unsecured personal business capital or capital secured by personal assets, be in your possession, and be subject to partial or total loss if investment fortunes reverse. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise.

In addition, you are required to show that the capital invested or being invested is:

- Substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;
- Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and
- Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Generally, the lower the cost of the enterprise, the higher,

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proportionately, the investment must be to be considered a substantial amount of capital.

**Your New Business Investment**

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant]

- If you have already invested capital into the treaty enterprise, all of your cancelled money orders, or personal, business, or cashier's checks (front and back) or other financial documents that have been certified by the bank to substantiate that your funds were already invested into the treaty enterprise.
- If you are actively in the process of investing capital into the treaty enterprise, all of your cancelled money orders, or personal, business, or cashier's checks (front and back) or other financial documents together with other relevant evidence that establishes your funds are in the process of being invested into the treaty enterprise and are irrevocably committed.
- A detailed and itemized list of goods and materials purchased to start up the treaty enterprise, as well as corresponding forms of payment made by you for the goods and materials purchased, such as money orders, or personal, business, or cashier's checks (front and back) that have been certified by the bank.
- The treaty enterprise's financial accounting of its purchase transaction, which describes in detail each individual transaction and identifies your at-risk funds, as well as corresponding forms of payment, such as money orders, or personal, business, or cashier's checks (front and back) that have been certified by the bank.
- The treaty enterprise's equity purchase agreement or similar agreement providing for the purchase and sale of equity between you and the enterprise, accompanied by the enterprise's:
  - minutes of meeting or written consent authorizing or reflecting the purchase and sale of equity

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- ledger reflecting the purchase and sale of equity
- equity certificates related to the purchase and sale of equity
- corresponding forms of payment for said equity, such as money orders, or personal, business, or cashier's checks (front and back) that have been certified by the bank.

Evidence should also show how the funds are irrevocably committed to the investment and placed at risk subsequent to the purchase of equity.

- All pages of the treaty enterprise's signed and dated lease that indicates the monthly rental fee, and total square footage of the premises, including all office, production, manufacturing, and/or warehouse spaces, as well as corresponding forms of payment made by you for monthly lease payments, such as money orders, or personal, business, or cashier's checks (front and back) that have been certified by the bank.

**Your Purchase of a Pre-Existing Business:**

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant]

- The executed agreement which specifically outlines the details of the purchase of the enterprise, such as an asset purchase agreement, equity purchase agreement or merger agreement, including the amount and evidence of payment and including all addendums, attachments, additional statements, exhibits, etc.
- Evidence of valuation, such as an appraisal or valuation analysis of business assets, that details the value of the assets purchased.
- Financial and business records of the pre-existing business: (remove if already provided)
  - The pre-existing business' latest financial statements including Balance Sheet and Statements of Income and Expenses.
  - The pre-existing business' most recent federal income tax return, along with all appropriate schedules.
  - The pre-existing business' Quarterly Wage Reports for all employees for

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the last        quarters that were accepted by the state.

- The pre-existing business' current valid business licenses for city, county, state and federal, as applicable.
- All pages of the pre-existing business' lease that indicate the monthly rental fee, and total square footage of the premises, including all office, production, manufacturing, and/or warehouse spaces.
- Corporate records related to the purchase of the pre-existing business, such as:
  - minutes of meetings or written consents authorizing or reflecting the purchase of the pre-existing business,
  - current equity ledger,
  - equity certificates, and
  - corresponding forms of payment in the form of money orders, or personal, business, or cashier's checks (front and back) that have been certified by the bank.
- The bill of sale for the pre-existing business and copies of all of your cancelled money orders or personal, business, or cashier's checks (front and back) that have been certified by the bank.
- Final escrow documents used in connection with the purchase of the pre-existing business and all copies of your cancelled money orders or personal, business, or cashier's checks (front and back) that have been certified by the bank.
- The escrow agent's or company's bank statement that shows the funds were actually deposited.
- If borrowed funds were used for the purchase of the pre-existing business, the loan or mortgage agreements, promissory notes, security agreements, or other evidence of borrowing which is secured by your own assets, other than those of the investment enterprise, and for which you are personally and primarily liable.

**Solely to Develop and Direct.**

To qualify as a treaty investor, you must demonstrate that you do or will develop and direct the investment enterprise through control of the enterprise. Your control of the investment enterprise can be demonstrated through ownership of at least 50 percent of the enterprise, by possessing operational control through a managerial position or other corporate device, or by other means.

[ADD THIS PARAGRAPH IF APPLICABLE] As noted above, the regulations require that you must be entering "solely to develop and direct" the operations of the enterprise. *Therefore, if you are* seeking admission in order to primarily engage in skilled and unskilled labor, you are ineligible for the E nonimmigrant visa classification. You may, however, perform "hands on" duties as long as they are incidental to your duties in developing and directing the operations of the enterprise. The evidence indicates that you are not coming here "solely to develop and direct" the enterprise.

You did not submit any evidence for this requirement.



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**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:  
[Delete any of the following that were already provided by the applicant]

- A detailed description of your duties in the enterprise.
- An organizational chart or diagram, showing your enterprise's organizational structure and staffing levels. If no employees have been hired, a business plan including any hiring timelines with descriptions of employee's duties.
- State Quarterly Wage Reports for the [1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarter of YEAR] that were accepted by the State of [STATE] for all employees. The forms should include the names, salaries, and number of weeks worked for all employees.  
Note: If employees listed on the organizational chart are not listed on the State Quarterly Wage Report, please explain why.
- The enterprise's payroll summary, and Forms W-2, W-3, and 1099-MISC evidencing wages paid to all employees.
- Employment agreements, if any, entered into between the enterprise and any employees.
- A current capitalization table or detailed list of the owners of the investment enterprise and their type and percentage of ownership. If you own less than 50% of the investment enterprise, submit documentation such as agreements signed by you and all other appropriate parties indicating that you control the enterprise by possessing operational control through a managerial position or other corporate device, or by other means.
- A list of the individuals elected by the enterprise's equity holders to oversee the management of the enterprise.
- [Where applicable] The most recent U.S. Securities and Exchange Commission, Form 10-K, Annual Report showing the treaty enterprise's subsidiaries and percentage of ownership.
- The most recent meeting minutes for the treaty enterprise that list the current equity holders and the type, amount and percentage of equity owned.
- The treaty enterprise's equity certificates (both front and back) issued to the present date indicating the name of each equity holder and type of equity issued.
- The treaty enterprise's ledger showing all equity (certificated and uncertificated) issued to the present date including total amount and type of equity issued and the names of all equity holders.

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- [Note for ISO: Use for **Inc. enterprises only**] The treaty enterprise's current bylaws (including all amendments), articles of incorporation (including all amendments) or certificates of designation which show the receipt date stamped by the appropriate state official, as applicable, and the type(s) and amount of stock authorized to be issued by the treaty enterprise.
- [Note for ISO: Use for **LLC enterprises only**] The treaty enterprise's current operating agreement including all addendums, attachments, additional statements, exhibits, etc., and limited liability company articles of organization, including all amendments, which includes the receipt date stamped by the appropriate state official, as applicable, and the names of members and the type and percentage of membership interests issued by the treaty enterprise.
- [Note for ISO: Use for **partnerships only**] The treaty enterprise's current partnership agreement, (including all addenda, attachments, additional statements, exhibits, etc.), and registration documents, (including all amendments), which show the receipt date stamped by the appropriate state official, as applicable, and the names of partners, type and percentage interests in the partnership and the extent of their liabilities.
- [Note for ISO: Use for **sole proprietorships only**] The treaty enterprise's sole proprietorship registration documents which include the receipt date stamped by the appropriate state official and which identify the individual operating the sole proprietorship.
- Subscription or equity purchase agreements between the treaty enterprise and its equity holders.
- [Note for ISO: Use for **franchises only**] Your franchise purchase agreement and related documentation showing who controls the enterprise.

**Evidence of Bona Fide Enterprise**

**Bona Fide Enterprise:** A treaty investor is required to establish that the investment enterprise is a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit. The enterprise is required to meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

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You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:  
[Delete any of the following that were already provided by the applicant]

- A more detailed description of the enterprise's activities.
- The Internal Revenue Service (IRS) notice that shows the Employer Identification Number (EIN) assigned to the enterprise.
- The federal income tax returns for the enterprise. [Note for ISO: specify years requested.]
- The latest financial statements, including the Balance Sheet and Statements of Income and Expenses, of the enterprise. If audited statements are available, we may give them more evidentiary weight than non-audited statements.
- Quarterly Wage Reports for all employees for the last \_\_\_\_\_ quarters that were accepted by the state.
- Payroll summary, W-2's and W-3's, evidencing wages paid to employees.
- The enterprise's current and valid city, county, state and federal business licenses, or evidence that one is not required.
- The enterprise's line and block organizational chart, showing ALL hierarchy and staffing levels. List all proposed positions, summary of proposed duties, and expected education levels. Include names of employees filling the positions, if known.
- The enterprise's business bank statements for the months of [insert specified months].
- The enterprise's customer and/or vendor outline agreements which govern the purchase of marketing materials or services for the enterprise's goods or services for the months of [specify months].
- Records or other documents that establish the enterprise's interest in real property at a physical location, such as purchase or lease agreements.
- Escrow documents used to purchase the property.
- The signed and dated lease that indicates the total square footage of the premises, including all office, production, manufacturing, and/or warehouse spaces.
- A letter from the owner or property management company which confirms that the property owner has granted permission to the lessee to sublease to the investment enterprise and that the enterprise is actually occupying the premises and maintaining the sub-lease agreement, as applicable.
- The enterprise's telephone directory listing.
- Local, national, and/or international newspaper, magazine, or trade publications showing advertisements or articles for or about the enterprise and its products or services. Specify the date, publication name, and circulation.
- Utility bills for the month(s) of: [insert time period necessary for adjudication.]

**Marginal Enterprise.** A treaty investor is required to demonstrate that the investment enterprise is not a marginal enterprise. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income, but that has a

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present or future capacity to make a significant economic contribution, is not a marginal enterprise. The projected future income-generating capacity should generally be realizable within 5 years from the date the applicant commences the normal business activity of the enterprise.

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant]

- Detailed business plan or executive summary, with one, three, and five-year projections for business expenses, sales, gross income and profits or losses, showing that the enterprise will generate income to provide more than a minimal living for you and your family or will make a significant economic contribution, along with any evidence that supports the statements made in the business plan or executive summary. A complete, signed copy of your U.S. Individual Income Tax Return for the year(s): \_\_\_\_\_.
- Federal W-2 and W-3 Forms for years\_\_\_\_\_.
- Copies of rent or mortgage payments made for your residence.
- Copies of utility bill payments for your residence.
- Copies of monthly revolving debt statements including amounts due and paid.
- Evidence of payment for everyday expenses, such as food, clothing, health care, child care, etc., for you and your family.
- Copies of car titles, car insurance, or other documents indicating the cost and payment of transportation for you and your family.
- The enterprise's latest financial statements including the Balance Sheet and Statements of Income and Expenses.
- Tax documents indicating growth in revenue by the enterprise.
- Contracts and/or receipts for services and materials involving capital improvements made to assets of the treaty enterprise.
- Payroll records indicating the employment of workers other than you and your family, especially when those records indicate an increase in workers employed since the inception of the enterprise.

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- Contracts, invoices, and/or receipts for the enterprise's goods or services.
- Bank statements or other documents showing payments received for goods or services provided by the enterprise.
- Evidence, such as copies of bank statements, property records, and wire transfers, to show that you have invested in any other business ventures (not necessarily in the United States), or that you receive income from sources other than the treaty enterprise, including an explanation of whether any additional sources of income will be used to benefit the enterprise (e.g., to further the goals of the business plan).
- Contracts from other businesses indicating future orders for the goods or services of the enterprise.
- Copies of patent or copyright applications and/or approvals on behalf of the enterprise.

**Your Nonimmigrant Status**

You must be maintaining your current nonimmigrant status in order to qualify for an extension of status.

**-OR-**

You must be maintaining your current nonimmigrant status in order to qualify for a change of status.

**-AND-**

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement.]
- 

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is insufficient to meet this requirement.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

[Delete any of the following that were already provided by the applicant or are not applicable]

- **Current Copy of I-94 Arrival/Departure Form:** The original I-94, a legible copy, or the printout of your current electronic Form I-94, Arrival-Departure Record (front and back).

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- **ORIGINAL Form I-94**: Department of Homeland Security records do not indicate a record of your latest arrival into the United States. Submit the original Form I-94, Arrival-Departure Record, which was issued to you upon arrival into the United States.
- **Previous Copies of I-94 Arrival/Departure Forms**: A legible copy of your original or printout of your electronic Form I-94, Arrival-Departure Record issued to you upon arrival in the United States and any subsequent and prior I-94s issued (front and back).
- **Passport Pages**: Legible copies of your passport, including identification pages, visa pages, and any pages with entry and exit stamps. We prefer color copies because the various color inks used for admission and departure control may not be as legible in black and white copies.

**OPTIONAL**: The case record indicates that your passport had expired and was no longer valid at the time you filed this application. Please explain. Provide evidence to establish that you had a valid unexpired passport at the time you filed the application or that a valid passport is not required.

- **Approval Notices**: Copies of all Form I-797A, Notice of Action, approval notices granting you any changes of status and/or extensions of stay in the United States in any nonimmigrant classification (including L-1, L-2, H-1, H-2, & H-3 classifications). If these are not available, list the periods of employment, the name of the employer(s) and the INS or USCIS file receipt number(s) assigned to the petition(s) or application(s).

**IF APPLICABLE**: You indicated your current nonimmigrant status was \_\_\_\_\_. Please submit the last \_\_\_\_ paystubs from your current employer.

- **F-1 Student Employment**: USCIS was unable to find a record for you in the Student and Exchange Visitor Information System (SEVIS). Submit copies of a properly executed SEVIS I-20 form. If you are authorized to engage in employment, also submit a legible copy of your Employment Authorization Document (Form I-766).
- **F-1 Student Status, D/S + 60**: USCIS was unable to find a record for you in the Student and Exchange Visitor Information System (SEVIS). Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that you have maintained your F-1 student status at all times while in the United States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to you; (b) a letter from each school you have attended as an F-1 student that confirms that you maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of your school transcripts from each school attended. If you are authorized to engage in employment, also submit a copy of your current Form I-766, Employment Authorization Document (Form I-766).

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- **F-2 Dependent:** You have listed your current nonimmigrant status as being an F-2 dependent of an F-1 student. Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that the F-1 student has maintained his or her F-1 student status at all times while in the United States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to the F-1 principal; (b) a letter from each school the F-1 principal has attended as an F-1 student that confirms that he or she maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of the F-1 principal's school transcripts from each school attended.
- **M-1 Student:** You have listed your current nonimmigrant status as being an M-1 vocational student. Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that you have maintained your M-1 status at all times while in the United States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to you; (b) a letter from each school you have attended as an M-1 vocational student that confirms that you maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of your school transcripts from each school attended.

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**STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS) Checks: COS from F-1, F-2, J-1, J-2, and M-1 Maintenance of Status Verification:** If SEVIS shows "Terminated" or anything other than "Active," check the date that the last status change was made on the SEVIS Exchange Visitors Listing page. If the termination or deactivation date was prior to filing the I-129 and/or prior to the expiration of the:

F-1 status (plus 60 days or 15 days if Designated School Official (DSO) authorized applicant to withdraw from class);

J-1 status (plus 30 days) indicated on the DS-2019;

M-1 status (plus 30 days - unless they fail to maintain status);

then the applicant was not maintaining an "Active Status" at the time of filing.

NOTE: SEVIS terminations are usually automatic. However, there are some occasions when the "No Show," "Invalid" or "Inactive" status will not show up for approximately 30 or more days. Before denying for failure to maintain status, check with the CSC, NAFSA representative to determine the exact date of termination.



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- **J-1 Maintenance of Status:** You listed your current nonimmigrant status as being a J-1 exchange visitor. Before we may grant a change of nonimmigrant status, you must demonstrate that the employee was maintaining a valid nonimmigrant status at the time you filed the application.

You filed this application on [date] and submitted a photocopy of your Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) for an exchange visitor program at [program sponsor]. A review of the Student and Exchange Visitor Information System (SEVIS) that corresponds to this DS-2019 shows that your status was terminated on [date], [amount of time] before you filed this application. The evidence does not demonstrate that you were maintaining a valid, nonimmigrant status at the time this application was filed.

The record must show that you were maintaining a valid nonimmigrant status at the time this application was filed. A letter from the Designated School Official (DSO) or [program sponsor] will not suffice. It is the DSO's or the program sponsor's responsibility to contact the Student and Exchange Visitor Program (SEVP) or the SEVIS help desk and have the electronic system corrected before the requested change of status may be granted.

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**J-1,212(e) WAIVER PROCESS:**

An applicant who is subject to 212(e) – and who has not fulfilled the two-year foreign residence requirement – must meet all the requirements for change of status, including approval of the Form **I-612**, Application for Waiver of the Foreign Residence Requirement, before you may approve the request for change of status. If the J-1 exchange applicant has not fulfilled the two-year foreign residence requirement and does not have a waiver of 212(e) prior to the filing of the Form I-129, they cannot change status. *See* 212(e) of the Act; 8 CFR 248.2.

For some 212(e) waivers, the Form I-612 is an electronic record, only. It is created in CLAIMS based on a Department of State (DOS) letter recommending a waiver of the two-year residence requirement under section 212(e). The DOS waiver recommendation is based on a “No Objection Letter” (NOL) from the government of the applicant's country of nationality or last residence or Government Agency Recommendations (GAR).

On October 10, 2006, VSC began electronically receiving NOLs for the whole country. All DOS recommendation letters dated October 10, 2006, or later, for I-612 waivers of Section 212(e) are transmitted directly to the VSC from the DOS. These cases are NOT e-filed with the VSC.

If the petitioner employer did not provide a copy of the I-797 Notice of Action for the approved Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended, request one. **If USCIS does not have an electronic I-612 approval notice on file dated prior to the filing of the I-129/I-539, then a copy should be requested from the**



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**applicant. If they do not submit an approval notice for an I-612 dated prior to the filing of the I-129/I-539 – DENY.** . See denial in <O:\Adjudications\I-129\H1B1\1-Denials\I-541 EOS-COS Status Templates\Beneficiary\Petition Approved J-1 COS to H-1B denied> and edit it to suit your E petition.

Please be aware that delays in the I-612 workload may result in the case pending beyond normal processing times. If an approved I-612 waiver is the only issue in this case, search the systems for a pending I-612 waiver of the two-year foreign residence requirement and request to expedite the waiver application before issuing a notice of intent to deny or request for evidence.

For all other 212(e) waivers, such as hardship and persecution, a paper record is submitted on Form I-612 to CSC for adjudication. If CSC is going to recommend approval, CSC will forward the I-612 to the State Department for concurrence. After State Department review, they will return their recommendation to CSC. As with NOL and GAR cases, the applicant must have been granted the waiver prior to the filing of the application. **If they do not submit an approval notice for an I-612 dated prior to the filing of the I-129/I-539 – DENY.** (Rev. 02-22-2008)

- **J-1 Waiver of INA Section 212(e) Two-Year Foreign Residence Requirement:** The Form I-129 requests a change of nonimmigrant status from J-1 to E-2. It appears that you may be subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act because:
  - You participated in a U.S.- or foreign government-financed J-1 exchange visitor program;
  - You became a J-1 exchange visitor as a national from a country designated as clearly requiring the services of persons with specialized knowledge or skill;
  - You changed status to J-1 exchange visitor on or after January 10, 1977 to participate in graduate medical education or training.

If you have been granted a waiver of the above requirement, provide a copy of the Form I-797A, Notice of Action, for the approved Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended.

- **J-2 Dependent Residency Requirement:** Your nonimmigrant status appears to be that of a J-2, dependent spouse or child of a J-1 exchange visitor. Further, it appears that your J-1 principal spouse or parent is subject to the two-year residence requirement of section 212(e) of the Immigration and Nationality Act. Therefore, you are also subject to the two-year residence requirement as the spouse or child of the J-1 principal.

Although you claim that your J-1 spouse or parent is no longer subject to the residence requirement, the case record does not support this claim. The record does not include a copy of a Form I-797A, Notice of Action, showing that a Form I-612, Application for Waiver of the Foreign Residence Requirement, has been approved for your J-1 spouse or parent. Please provide a copy of an approval notice showing that a waiver has been approved for the

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J-1 spouse or parent. Also, provide copies of all old Form IAP-66s and/or new Student and Exchange Visitor Information System (SEVIS) Form DS-2019s that have been issued to your J-1 spouse or parent to establish that s/he has been maintaining his or her status in the United States.

**General Reminders**

If you are submitting evidence in response to this request, please note the following:

- Unless an original document is requested above, clear and legible copies of the evidence are generally acceptable. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- You must submit a full English language translation of any evidence containing a foreign language. The translator must certify that the translations are accurate and complete and that he or she is competent to translate from the foreign language into English.

Also, you may provide an index of the evidence and corresponding tabs for each section of evidence to assist USCIS in reviewing your submission.