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## REQUEST FOR EVIDENCE

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

Your organization, [insert name of principal employer], filed Petition for a Nonimmigrant Worker (Form I-129) with U.S. Citizenship and Immigration Services (USCIS), seeking to classify the employee, [insert employee's name] (applicant), as a nonimmigrant employee of a treaty investor (E-2). **We need additional information from you** in order to process your application and determine if your employee is eligible for E-2 classification.

The Form I-129 indicates your organization seeks to employ the applicant as a [insert title] from [insert start date] to [insert end date].

The E-2 classification may be granted to employees of treaty investors who:

- Will engage in duties of an executive or supervisory character; or
- Have special qualifications that make their services essential to the efficient operation of the enterprise.

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 your organization and the applicant 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 English 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.

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

- [Insert name of document]

-

In order for USCIS to consider this 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 an Employee of an E-2 Treaty Investor**

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

- Intends to depart when his or her E-2 status ends or is terminated;
- Has the same nationality as you, the principal employer; and
- Will engage in duties of an executive or supervisory character or has special qualifications that make his or her services essential to the efficient operation of the enterprise.

You must also show that you (the principal employer):

- Are a person in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty investor status or, if not in the United States, would be classifiable as a treaty investor; or

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- Are an enterprise or organization at least 50 percent owned by individuals in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty investor status or who, if not in the United States, would be classifiable as treaty investors.

**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 the 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 employer]

- 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 into the United States; and
  - The U.S. Department of State must recognize the treaty as sufficient to 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 electronic printout of the Form I-94, Arrival-Departure Record, you received

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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.

**Enterprise or Organization Treaty Country Nationality.** If the applicant is an employee of an enterprise or organization and not the treaty investor, then the nationality of the enterprise or organization is based on its ownership. Ownership, in turn, must be traced as best as is practicable to the individuals who are ultimately its owners. You must establish that the enterprise or organization for which the applicant will be working (or intends to continue working for) is at least 50 percent owned by individuals having the nationality of the treaty country and maintaining nonimmigrant treaty investor status if in the United States or, if not in the United States, who would be classifiable as treaty investors.

[NOTE TO ISO: How far you should trace back to determine the ultimate owner(s) of the treaty enterprise will depend on what is practicable based on the facts presented. Where it appears more likely than not that the ultimate owners of an enterprise in question have the requisite nationality, then there is no need to continue to trace your way back up the chain of ownership. You must make this determination, however, based on the facts presented, and you may take into consideration whether the enterprise is publicly traded, country conditions, and so on, keeping in mind that the burden rests with the petitioner to meet the 'more likely than not' requirement. When it is necessary to determine whether the individual owners of an enterprise or organization are currently in the United States maintaining E1/E2 status or would be classifiable for E1/E2 status if not in the United States, copy and paste the necessary bullets from the "Treaty Country Nationality" section of the RFE. When the enterprise or organization is owned by multiple individuals, indicate whose information is being requested.]

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, copies of: [Delete any of the following that were already provided by the employer]

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- A current capitalization table of the treaty enterprise or other detailed list of the owners of the treaty enterprise, including their nationality or citizenship and the type of ownership and percentage each owns.
- The treaty enterprise's most recent annual report that lists all affiliates, subsidiaries, and branch offices, and percentage of ownership by nationality or citizenship of owners.
- [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.
- [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 and state his or her nationality or citizenship.
- [Note for ISO: Use when applicable] Qualification documents which demonstrate that the treaty enterprise has been authorized to operate as a branch office in the relevant state by the appropriate authority for such state.
- [Note for ISO: Use for franchises only] The treaty enterprise's franchise agreement, including all addenda, attachments, additional statements, exhibits, etc., provided such agreement identifies the treaty investor's nationality or citizenship.

**Treaty Country Nationality for the Employee.** The employee of an E-2 treaty investor must have the

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same nationality as you, the principal employer. The employee's country of nationality is determined by the passport he or she used when he or she was last admitted into the United States.

You did not submit 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 employer.)

- A copy or printout of the electronic Form I-94, Arrival-Departure Record, the employee received upon admission to the United States; and
- Copies of the employee's passport identification pages. This should include:
  - The employee's signature, photograph, and personal data;
  - Any relevant visa pages; and
  - Pages with relevant stamps showing admission into the United States.

**Principal Employer Requirements.** You must establish that you, the principal employer, are in the United States and maintaining nonimmigrant treaty investor status, or if you are not in the United States, that you would be classifiable as a treaty investor.

**[Note to ISO: Please refer to the E-2 treaty investor RFE for issues pertaining to the principal alien employer and copy the relevant requirements for the principal employer here.]**

**Executive or Supervisory Position.** You must establish that the applicant will be principally and primarily (as opposed to incidentally or collaterally) performing in a position that is executive or supervisory in nature with your investment enterprise. Executive and supervisory duties are those which provide the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof.

Where applicable, factors to be considered include:

- Whether the proposed executive position provides the employee with great authority to determine the policy of, and the direction for, the enterprise;
- Whether a position proposed to be primarily of supervisory character provides the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not

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generally involve the direct supervision of low-level employees, and;

- Whether the applicant possesses executive and supervisory skills and experience; a salary and position title commensurate with executive or supervisory employment; recognition or indicia of the position as one of authority and responsibility in the overall organizational structure; responsibility for making discretionary decisions, setting policies, directing and managing business operations, supervising other professional and supervisory personnel; and that if the position requires some routine work usually performed by a staff employee, that work may only be of an incidental nature.

You did not submit 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, copies of: [Delete any of the following that were already provided by the employer.]

- A detailed description of the applicant's duties in the investment enterprise. The description of duties should address, as applicable:
  - How the applicant will direct the organization or a major component of the organization;
  - Exactly whom the applicant directs including their job title and position description;
  - How the applicant will establish the goals and policies of the organization or component;
  - How the applicant will exercise responsibility for discretionary decision-making.
- An organizational chart or diagram, showing your enterprise's organizational structure and staffing levels. List all employees in the applicant's immediate division, department, or team by name, job title, summary of duties, education level, and salary. Identify the applicant's position in the chart. [NOTE TO ISO: List of employees may not be necessary if applicant will be holding an executive position.]
- 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



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Wage Reports, please explain why.

- Your enterprise's payroll summary, and Forms W-2, W-3, and 1099-MISC evidencing wages paid to all employees under the applicant's direction.
- Employment agreements entered into by newly hired employees who will be managed by the applicant.

**-OR-**

**Employees with Special Qualifications.** You must establish that the skills and/or aptitudes possessed by the applicant are essential to the operation of your investment enterprise. Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity than one of an executive or supervisory character brings to a position or role that are essential to the successful or efficient operation of your investment enterprise. Note that skills which are essential at one point in time may become commonplace or nonessential at a later date. For instance, a skill that is needed to start up an enterprise may no longer be essential after initial operations are complete and running smoothly. Similarly, a skill may be essential only in the short-term for training locally hired employees. On the other hand, under certain circumstances, you may be able to establish that the skill is essential to the treaty enterprise for a longer period of time, such as in connection with activities in the areas of product improvement, quality control, or the provision of a service that is not yet generally available in the United States.

You did not submit 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 employer.)**

- A more detailed description of the employee's duties with your investment enterprise. The description should:
  - Address the duties that will be performed and percentage of time spent on each of the listed duties.
  - Identify the specific skills and/or aptitudes that are essential to the successful or efficient operation of the treaty enterprise.



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- Address how the skills and/or aptitudes the employee will use in performing these duties are essential to the successful or efficient operation of the enterprise.
- Evidence to establish the employee's degree of proven expertise in the area of operations with which he or she will be involved, and whether others possess the employee's specific skill or aptitude to perform the contemplated duties.
- Evidence to establish the length of the employee's experience and/or training with your enterprise.
- Evidence to establish the period of training or other experience necessary to effectively perform the projected duties; the relationship of the skill or knowledge to your enterprise's specific processes or applications; and the salary the special qualifications can command.

**Note:** Knowledge of a foreign language and culture does not, by itself, meet the special qualifications requirement.

- Evidence from sources such as the chamber of commerce, state employment services, labor organizations, or trade sources to establish whether the employee's skills and qualifications are readily available in the United States.
- Copies of employment agreements entered into by newly hired employees who will be managed by the applicant.
- The total number of all employees who are currently employed by your enterprise as essential skills personnel and are employed in positions similar to the applicant's intended position, together with an explanation why the applicant's skills or aptitudes are essential notwithstanding the employment of these other persons. Please be aware that the skills necessary and essential to start an enterprise may later become non-essential.
- Evidence to establish the length of time the employee will be needed to perform the duties of the position requiring special qualifications in the United States. Specify if the enterprise is a start-up operation. Indicate if the employee will be training locally hired employees. As applicable, provide the projected date for completion of the operation's start-up or the replacement of foreign workers having special qualifications with trained, locally hired employees. The evidence should include a projected plan and the reasons for the anticipated length of time to train a replacement.
- Certificates, diplomas or transcripts, letters from employers describing job titles, duties, operator's manuals, and the required level of education and knowledge.

#### **The Employee's Nonimmigrant Status**

The employee must be maintaining his/her current nonimmigrant status in order to qualify for an extension of status.

**-OR-**

The employee must be maintaining his/her current nonimmigrant status in order to qualify for a change of status.

**-AND-**

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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 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 employer or are not applicable]

- **Current Copy of I-94 Arrival/Departure Form:** The original I-94, a legible copy, or a printout of the employee's current electronic Form I-94, Arrival-Departure Record (front and back).
- **ORIGINAL Form I-94:** Department of Homeland Security records do not indicate a record of the employee's latest arrival into the United States. Submit the original Form I-94, Arrival-Departure Record, which was issued to the employee upon arrival into the United States.
- **Previous Copies of I-94 Arrival/Departure Forms:** The original I-94, legible copy, or printout of the employee's electronic Form I-94, Arrival-Departure Record issued to the employee upon arrival in the United States and any subsequent and prior I-94s issued (front and back).
- **Passport Pages:** Legible copies of the employee's 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 the employee's passport had expired and was no longer valid at the time you filed this application. Please explain. Provide evidence to establish that the employee 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 the employee 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

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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 applications.

**IF APPLICABLE:** You indicated the employee's last accorded nonimmigrant status was \_\_\_\_. Please submit the last \_\_ paystubs from his/her current employer.

- **F-1 Student Employment:** USCIS was unable to find a record for the employee in the Student and Exchange Visitor Information System (SEVIS). Submit copies of a properly executed SEVIS I-20 form. If the employee is authorized to engage in employment, also submit a legible copy of the employee's Employment Authorization Document (Form I-766).
- **F-1 Student Status, D/S + 60:** USCIS was unable to find a record for the employee in the Student and Exchange Visitor Information System (SEVIS). 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 requesting a change of status. To establish that the employee maintained his/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 employee; (b) a letter from each school the employee attended as an F-1 student that confirms that the employee 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 employee's school transcripts from each school attended. If the employee is authorized to engage in employment, also submit a copy of the employee's current Employment Authorization Document (Form I-766).
- **F-2 Dependent:** You listed the employee's current nonimmigrant status as F-2, a dependent of an F-1 student. 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 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 the employee's current nonimmigrant status as being an M-1 vocational student. 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 requesting a change of status. To establish that the employee maintained his/her 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

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issued to the employee; (b) a letter from each school the employee attended as an M-1 vocational student that confirms that the employee 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 employee's 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.

- **J-1 Maintenance of Status:** You listed the employee's 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 the employee's 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 the employee's status was terminated on [date], [amount of time] before you filed this application. The evidence does not demonstrate that the employee was maintaining a valid, nonimmigrant status at the time this application was filed.

The case record must show that the employee was maintaining a valid nonimmigrant status at the time you filed this application. A letter from the Designated School Official (DSO) or [program sponsor] is not enough. 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 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 did not provide a copy of the 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, 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 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 petition. **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

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the employee may be subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act because:

- The employee participated in a U.S. or foreign government financed J-1 exchange visitor program;
- The employee 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;
- The employee changed status to J-1 exchange visitor on or after January 10, 1977 to participate in graduate medical education or training.

If the employee has 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:** The employee's nonimmigrant status appears to be that of a J-2, dependent spouse or child of a J-1 exchange visitor. Further, it appears that the J-1 principal is subject to the two-year residence requirement of section 212(e) of the Immigration and Nationality Act. Therefore, the employee is also subject to the two-year residence requirement as the spouse or child of the J-1 principal.

Although you claim that the employee's 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 the employee's J-1 spouse or parent. Please provide a copy of an approval notice showing that a waiver has been approved for the 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 the 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.