



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.9
425 I Street NW
Washington, DC 20536

June 18, 2001

MEMORANDUM FOR: All Service Center Directors
All District Directors
All Officers-in-Charge

FROM: Thomas Cook /s/
Acting Assistant Commissioner,
Office of Programs

SUBJECT: Travel After Filing a Request for a Change of Nonimmigrant Status

The purpose of this memorandum is to correct an article published in the March 26, 2001 issue of Interpreter Releases. Quoting a statement by a Service officer, the article advises that an alien on whose behalf a request for a change of nonimmigrant status has been filed may travel outside of the United States and the request for a change of status would not be considered abandoned. This is not an accurate interpretation of current Service policy.

Service officers are reminded that an alien on whose behalf a change of nonimmigrant status has been filed and who travels outside the United States before the request is adjudicated is considered to have abandoned the request for a change of nonimmigrant status. This has been, and remains, the Service's long-standing policy. The Office of Adjudications has described this particular policy in numerous letters and correspondence with the public and the legal community.

If at any time it comes to the attention of the Service that an alien on whose behalf a request for a change of nonimmigrant status has been filed has travel outside of the United States during the pendency of the request for a change of status, the application or petition should be denied pursuant to 8 CFR 248.3(g).

Attached for your information is a copy of the article from the March 26, 2001 issue of Interpreter Releases. Please note that the reference contained in the article to a October 20, 1999 letter written by Thomas Simmons is not germane to this issue because it relates to the filing of an extension of temporary stay, not a request for a change of nonimmigrant status. Current Service policy does not preclude an alien from traveling outside of the United States while a request for an extension of temporary stay is pending with the Service.

For additional information regarding this issue, contact the Business and Trade Branch of the Adjudications Division at (202) 353-8177.

Attachment

decision to step down, praising him as "an exemplary leader during a time of dynamic change and tremendous progress at the Board."

Chairman Schmidt fostered a number of initiatives to improve case processing and customer service during his term as Chairman. The Board expanded during that time from five to 21 Members, and decided over 130,000 cases, including nearly 200 precedent decisions. The Board also created a new management structure under Chairman Schmidt's leadership, established the first unified Clerk's Office to support the direct filing of appeals, developed a "more efficient and productive" en banc deliberative process, held oral arguments outside the Washington, D.C., area for the first time, issued the *Board of Immigration Appeals Practice Manual and Questions and Answers*, created a virtual law library on the EOIR's website, and instituted the first Pro Bono Appeals Pilot Program. The Board is also piloting a streamlined appeals system, the preliminary results of which show a more than 20 percent increase in case completions, according to the EOIR. ■

11. State Dept. Rule Allows Certain Int'l Broadcasting Employees to Receive Special Immigrant Visas

The State Department's Bureau of Consular Affairs has published an interim rule amending its regulation at 22 CFR § 42.32 to accord fourth preference employment-based special immigrant classification to certain international broadcasters, pursuant to recently enacted legislation. The interim rule, which was published in 66 Fed. Reg. 15349-50 (Mar. 19, 2001), is reproduced in Appendix V of this Release. It takes effect on April 18, 2001, and comments are due by May 18, 2001.

Pub. L. No 106-536, signed by President Bill Clinton on November 22, 2000, amended INA § 101(a)(27) to provide special immigrant status under INA § 203(b)(4) for aliens (and accompanying spouses and children) who seek to enter the U.S. to work as broadcasters for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of that Board. The new law provides 100 such visas per fiscal year, excluding those made available to spouses and children.²⁹

The interim rule adds a new paragraph (d)(8) to 22 CFR § 42.32. ■

²⁹ For previous reports on Pub. L. No 106-536 (S. 3239), see 78 Interpreter Releases 10 (Jan. 3, 2001); 77 Interpreter Releases 1562, 1565 (Nov. 6, 2000).

12. INS Clarifies Effect of Travel Abroad on Change of Status Request from H-4 to H-1B

In recent e-mail correspondence, the INS clarified the effect of travel abroad on a change of status request from H-4 to H-1B, when the alien would re-enter the U.S. on the H-4 visa because the H-1B would not be approved until after her return. The INS made the clarification in response to an inquiry e-mailed on December 7, 2000, by attorney Michele Buchanan, of Pacific Palisades, California.

Specifically, Ms. Buchanan's firm recently filed an H-1B visa petition requesting a change of status to H-1B for an H-4 visa holder. The client would be traveling abroad for the holidays, and would re-enter the U.S. on the H-4 visa because her H-1B would probably not be approved until after her return to the U.S. in H-4 status. Ms. Buchanan asked whether, if the H-1B petition/change of status application were adjudicated after her return to the U.S. in H-4 status, she would need to leave the U.S. and re-enter in H-1B status in order to "activate" the approved H-1B petition, or whether she could rely on the approved I-129 petition with an I-94 indicating that her status has been changed to H-1B.

Ms. Buchanan also recalled a "similar, yet slightly different situation," in which Thomas W. Simmons, then-Branch Chief for the INS's Business and Trade Services Branch, issued a letter dated October 20, 1999, addressed to Norman Plotkin. Mr. Plotkin described a scenario in which an H-1B alien was employed by "Company A" with both an H-1B visa petition and an H-1B visa stamp valid until December 31, 2000. "Company B" then extended a job offer to the alien and filed a subsequent "change of employer" H-1B petition, and requested an extension of stay on behalf of the alien. While Company B's petition was pending, the alien traveled outside the U.S., reentered using the still-valid visa from Company A, and resumed employment with that company. Upon reentering, she was issued a new I-94 valid until December 31, 2000, consistent with the initial petition filed by Company A. Thereafter, the INS approved the petition filed by Company B with a validity date until December 27, 2001. Mr. Plotkin asked which validity date was controlling: that of the first petition filed by Company A and the I-94 issued thereunder, or that of the second petition filed by Company B and the new I-94 issued therewith? Mr. Simmons replied that the alien could remain in the U.S. until December 27, 2001, as an H-1B nonimmigrant. He added that the alien's departure and readmission to the U.S. would have no bearing on the validity period of the petition filed by Company B.³⁰

In reply to Ms. Buchanan's inquiry, Linda Dodd-Major,

³⁰ See 76 Interpreter Releases 1723 (Dec. 3, 1999).

Director of the INS's Office of Business Liaison, said that if the H-1B petitioner for the H-4 beneficiary requested a change of status from H-4 to H-1B, then she did not see any problem. "The only problem would come if she re-entered the U.S. under H-4 after INS has already approved the change of status to H-1B, leaving her with two I-94's: one received at admission endorsed as H-4 and one dated earlier endorsed H-1B (attached to the approval notice)." She said she believed that Mr. Simmons meant to say that "the alien could rely on the earlier-issued I-94 (reflecting H-1B) and continue to use it without having to leave and re-enter the U.S."

Ms. Buchanan told Interpreter Releases that she found both Mr. Simmons's and Ms. Dodd-Major's clarifications surprising because they seem "to represent a departure from what was a commonly held understanding of the effect of an individual leaving the U.S. while an application for change/extension of stay was pending—that the change/extension aspect of the matter was deemed abandoned." ■

13. EOIR Issues Revised Forms Reminder

The Justice Department's Executive Office for Immigration Review (EOIR) issued the following reminder on February 9, 2001:

Practitioners Reminded to Use Revised Forms EOIR-27 and EOIR-28 When Filing Notices to Appear Before the Board of Immigration Appeals and Immigration Court

The [EOIR] reminds attorneys and other representatives (practitioners) who practice or wish to practice before the Board of Immigration Appeals (BIA or Board) or the Immigration Courts that they *must* use the EOIR-27 and EOIR-28 forms that were revised in 1999. The updated forms are marked by the date "August 99" in the lower right corner on the front. The Board and the courts may reject any older forms that are submitted.

EOIR announced the requirements for using the revised forms in a news release and fact sheet dated June 27, 2000, on the amended Rules of Professional Conduct for Immigration Practitioners. The fact sheet advised practitioners to start using the revised forms immediately and noted that old forms would not be accepted after January 1, 2001. Both the news release and fact sheet are posted on EOIR's Web site at <http://www.usdoj.gov/eoir/press.htm>. The revised forms are also available on EOIR's Web site at

<http://www.usdoj.gov/eoir/formslist.htm> as well as from the Clerk's Office at the Board and any Immigration Court.

Practitioners representing matters before the Board must file the revised Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals. Practitioners representing matters before an Immigration Court must file the revised Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

Each of these forms is necessary to determine whether or not a practitioner is authorized under the regulations to represent aliens before the respective tribunals; to provide the represented alien an opportunity to expressly consent to the practitioner's representation and to the release of EOIR records to the practitioner where required by law; and to formally notify the INS and EOIR of such representation. It also provides information regarding appearances and representation before the Board and the court, including the manner in which a practitioner may properly withdraw from a proceeding. ■

14. HHS Seeks Proposals for Torture Victim Services

The Administration for Children and Families, of the Department of Health and Human Services (HHS)'s Office of Refugee Resettlement, has published a request for applications for services to victims of torture. Covered services include medical, psychological, legal, and social services, as well as research and training for health care providers outside treatment centers to enable the provision of services to victims of torture.

The HHS estimates that four to six new "Treatment and Services for Torture Survivors" grants can be awarded during fiscal year 2001, for a total of about \$2 million. Applications may be for project periods of up to three years, with funding for a one-year budget period provided by the initial grant and further funds provided by continuation grants for subsequent years. The HHS encourages proposals that will address a range of services for torture victims in the project's specified geographic area, and applications may include several organizations in collaboration.

The closing date for submission of applications is May 7, 2001. The notice, which was published in 66 Fed. Reg. 13771-76 (Mar. 7, 2001), is not reproduced in this issue of Interpreter Releases for space reasons. For more information