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The Proposed I-140 EAD Rule - Continually Updated

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Submitted by Rajiv S. Khanna on Dec 30th 2015

This entry is now old law. The new law is at http://www.immigration.com/blogs/i-140-ead-regulations-effective-17-janu...[2]

Note: *Updated all of the regulations comments on 31 December 2015. I will keep adding, as needed.*

The proposed EAD I-140 rule has been titled by USCIS as ?Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers?

Here are the key changes that will be made under the proposed I-140 EAD rule:

1. Retention of employment-based immigrant visa petitions. If your I-140 was approved 180 days ago, loss of job, closure of employer?s business or withdrawal by employer of the form I-140 will not affect your priority date OR your ability to get H-1 extensions beyond 6 years.

DHS proposes to enhance job portability (ability to change jobs without hurting the green card process) for certain workers who have approved immigrant visa petitions (Form I-140) in the employment-based first preference (EB-1), second preference (EB-2), and third preference (EB-3) categories but who are unable to obtain those visas (green cards) in the foreseeable future due to significant immigrant visa backlogs. Specifically, DHS proposes to amend its automatic revocation regulations so that immigrant visa petitions (I-140) that have been approved for 180 days or more would no longer be subject to automatic revocation based solely on withdrawal by the petitioner or termination of the petitioner?s business. As long as the petition approval has not been revoked for fraud, material misrepresentation, the

invalidation or revocation of a labor certification, or USCIS error, the petition will generally continue to be valid to the beneficiary for various job portability and status extension purposes under the immigration laws. Such a beneficiary, however, must obtain a new job offer and may need another immigrant visa petition approved on his or her behalf to ultimately obtain status as an LPR.

2. Retention of priority dates. You will keep your priority date even if the old employer revokes your I-140. This provision was in doubt for many years, see historical narative on my earlier blog entry: http://www.immigration.com/blog/form-i-140-priority-date/pd-can-be-carri..[3]

DHS proposes to further enhance job portability for workers with approved EB-1, EB-2, and EB-3 immigrant visa petitions by providing greater clarity regarding when they may retain the priority dates assigned to those petitions and effectively transfer those dates to new and subsequently approved employment-based immigrant visa petitions. As with the immediately preceding provision, priority date retention generally would be available so long as the initial immigrant visa petition was approved and this approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error. This provision would improve the ability of certain workers to accept promotions, change employers, or accept other employment opportunities without fear of losing their place in line for immigrant visas based on the skills they contribute to the U.S. economy.

3. Nonimmigrant grace periods. For E, H-1B, H-1B1, L-1 and TN visa holders you will have a 60-day grace period to file through another employer. Currently there is no grace period.

To enhance job portability for certain high-skilled nonimmigrants, DHS proposes to generally establish a one-time grace period, during an authorized validity period, of up to 60 days whenever employment ends for individuals holding E-1, E-2, E-3, H-1B, H-1B1, L-1, or TN nonimmigrant status. This proposal would allow these high-skilled workers to more readily pursue new employment should they be eligible for other employer- sponsored nonimmigrant classifications or for the same classification with a new employer. Conversely, the proposal allows U.S. employers to more easily facilitate changes in employment for existing or newly recruited nonimmigrant workers. **The individual may not work during the grace period, unless otherwise authorized by regulation. As needed, DHS in its discretion may eliminate or shorten the 60-day period on a case-by-case basis.**

4. Eligibility for employment authorization in compelling circumstances. So, you may be able to obtain EAD without having filed an I-485, which can take many years wait for EB-2/EB-3 applicants.

DHS also proposes to provide additional stability and flexibility to certain high-skilled nonimmigrant workers in the United States who are the beneficiaries of approved employment-based immigrant visa petitions but who cannot obtain an immigrant visa number due to statutory limits on immigrant visa issuance and are experiencing compelling circumstances. Specifically, DHS proposes to allow such beneficiaries in the United States on E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status to apply for separate employment authorization for a limited period if there are compelling circumstances that, in the discretionary determination of DHS, justify the consideration of such employment authorization.

5. H-1B licensing clarifications.

DHS proposes to clarify exceptions to the requirement that make approval of an H-1B petition contingent upon licensure where such licensure is required to fully perform the duties of the

specialty occupation. The proposed rule would generally allow a petitioning employer that has filed an H-1B petition for an unlicensed worker to meet the licensure requirement by demonstrating that the worker has filed a request for such license but is unable to obtain it, or is unable to file a request for such a license, because a state or locality requires a social security number or the issuance of employment authorization before accepting or approving such requests. The proposed rule also clarifies that DHS may approve an H-1B petition on behalf of an unlicensed worker if he or she will work in a State that allows such individuals to be employed in the occupation under the supervision of licensed senior or supervisory personnel.

6. Changes in EAD process.Timely filing of renewal of EAD will allow you to continue working for 180 days. BUT the 90-day deadline for USCIS to adjudicate EAD applications is being removed. :-(

Finally, to provide additional stability and certainty to U.S. employers and individuals eligible for employment authorization in the United States, DHS is also proposing several changes to its regulations governing its processing of applications for employment authorization. First, to minimize the risk of any gaps in employment authorization, DHS proposes to automatically extend the validity of Employment Authorization Documents (EADs or Forms I-766) in certain circumstances based on the timely filing of an application to renew such EADs. Specifically, DHS would automatically extend the employment authorization and validity of existing EADs issued to certain employment-eligible individuals for up to 180 days from the date of the cards? expiration, so long as: (1) a renewal application is filed based on the same employment authorization category as the previously issued EAD (or the renewal application is for an individual approved for Temporary Protected Status (TPS) whose EAD was issued pursuant to 8 CFR 274a.12(c)(19)); (2) such renewal application is timely filed prior to the expiration of the EAD and remains pending; and (3) the individual?s eligibility for employment authorization continues beyond the expiration of his or her EAD, and an independent adjudication of the individual?s underlying eligibility is not a prerequisite to the extension of employment authorization. At the same time, DHS would eliminate the current regulatory provisions that require adjudication of EAD applications within 90 days of filing and that authorize interim EADs in cases where such adjudications are not conducted within the 90-day timeframe. These changes would provide enhanced stability and certainty to employment-authorized individuals and their employers, while reducing opportunities for fraud and protecting the security-related processes undertaken for each EAD application.

Folks, I have not commented on certain provisions in the proposed regulations that are already an established part of the USCIS policy. I intend to keep updating this blog entry, as and when needed.

FAQ

From our Twitter account: https://twitter.com/immigrationcom [4]

Q. Does applicant **still need re-do PERM** if changed job to different employer after I-140 was approved over 180 days?

A. The answer is, yes. If your I-140 is approved, and has been pending 180 days AND an I-485 has not been filed, you WILL need to start with a new PERM when you change jobs.

THE REGULATIONS WITH COMMENTS FROM RAJIV

§ 204.5 Petitions for employment-based immigrants. * * ** *

(d) Priority date. The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the labor certification application was accepted for processing by any office of the Department of Labor. The priority date of any petition filed for a classification under section 203(b) of the Act which does not require a labor certification from the Department of Labor shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with USCIS. The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with USCIS. The priority date of an alien who filed for classification as a special immigrant under section 203(b)(4) of the Act prior to October 1, 1991, and who is the beneficiary of an approved petition for special immigrant status after October 1, 1991, shall be the date the alien applied for an immigrant visa or adjustment of status.

(e) Retention of section 203(b)(1), (2), or (3) priority date. (Rajiv: 203(b)(1), (2), (3) means EB-1, EB-2, EB-3) A petition approved on behalf of an alien under sections 203(b)(1), (2), or (3) of the Act accords the alien the priority date of the approved petition for any subsequently filed petition for any classification under sections 203(b)(1), (2), or (3) of the Act for

(Rajiv: ?any classification? allows us to file, for example an EB-2 green card process and transfer the priority date from an earlier EB-3 approved I-140)

which the alien may qualify. In the event that the alien is the beneficiary of multiple approved petitions under sections 203(b)(1), (2), or (3) of the Act, the alien shall be entitled to the earliest priority date.

(2) The priority date of a petition may not be retained under paragraph (e)(1) of this section if at any time USCIS revokes the approval of the petition because of:

(i) Fraud, or a willful misrepresentation of a material fact;

(ii) Revocation by the Department of Labor of the approved permanent labor certification that accompanied the petition;

(iii) Invalidation by USCIS or the Department of State of the permanent labor certification that accompanied the petition; or

(iv) A determination by USCIS that petition approval was in error. (3) A denied petition will not establish a priority date.

(4) A priority date is not transferable to another alien.

(5) A petition filed under section 204(a)(1)(F) of the Act for an alien shall remain valid with respect to a new employment offer as determined by USCIS under section 204(j) of the Act and 8 CFR 245.25. An alien will continue to be afforded the priority date of such petition, if the requirements of paragraph (e) of this section are met.

(Rajiv: It is good that we will have clarification that priority dates will be carried forward even if an old employer revokes the old priority date, and the only time we stand to lose PD is if there is fraud, error, etc. Currently, that situation is far from clear, see, http://www.immigration.com/blog/form-i-140-priority-date/pd-can-be-carried-forward-even-if-old-i-140-revoked-unless-fraud-or[3])

* * ** *

(n) * * *

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(3) Validity of approved petitions. Unless approval is revoked under section 203(g) or 205 of the Act, an employment-based petition is valid indefinitely.

(Rajiv: This is also the current policy. An I-140, once approved, is valid forever)

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* ** *

(Rajiv: The provisions below, allow you get EAD and further renewals under**compelling circumstances**, if your priority date is less than a year away and you are maintaining status. **Examples** of compelling circumstances are:

Serious Illnesses and Disabilities. The nonimmigrant worker can demonstrate that he or she, or his or her dependent, is facing a serious illness or disability that entails the worker moving to a different geographic area for treatment or otherwise substantially changing his or her employment circumstances.

Employer Retaliation. The nonimmigrant worker can demonstrate that he or she is involved in a dispute regarding the employer?s illegal or dishonest activity as evidenced by, for example, a complaint filed with a relevant government agency or court, and the employer has taken retaliatory action that justifies granting separate employment authorization to the worker on a discretionary basis.

Other Substantial Harm to the Applicant. The nonimmigrant worker can demonstrate that due to compelling circumstances, he or she will be unable to timely extend or otherwise maintain status, or obtain another nonimmigrant status, and absent continued employment authorization under this proposal the applicant and his or her family would suffer substantial harm. Such circumstances, for example, may involve an H-1B nonimmigrant worker who has been applying an industry-specific skillset in a high-technology sector for years with a U.S. entity that is unexpectedly terminating its business, where the worker is able to establish: (1) that the same or a similar industry (e.g., nuclear energy, aeronautics, or artificial intelligence)

does not materially exist in the home country, and (2) that the resulting inability to find productive employment would cause significant hardship to the worker and his or her family if required to return home. In such circumstances, the employment authorization proposal would provide the individual with an opportunity to find another employer to sponsor him or her for immigrant or nonimmigrant status and thereby protect the worker and his or her family members from the substantial harm they would suffer if required to depart the United States.

Significant Disruption to the Employer. The nonimmigrant worker can show that due to compelling circumstances, he or she is unexpectedly unable to timely extend or change status, there are no other possible avenues for the immediate employment of such worker with that employer, and the worker?s departure would cause the petitioning employer substantial disruption to a project for which the worker is a critical employee. Such circumstances, for example, may include the following:

- An L-1B nonimmigrant worker is sponsored for permanent residence by an employer that subsequently undergoes corporate restructuring (e.g., a sale, split, or spin off) such that the worker?s new employer is no longer a multinational company eligible to employ L-1B workers, there are no available avenues to promptly obtain another work-authorized nonimmigrant status for the worker, and the employer would suffer substantial disruption due to the critical nature of the worker?s services. In such cases, the employment authorization proposal would provide the employer and worker a temporary bridge allowing for continued employment while they continue in their efforts to obtain a new nonimmigrant or immigrant status.

- An H-1B nonimmigrant worker is providing critical work on biomedical research for an entity affiliated with an institution of higher education, thus making the entity exempt from the H-1B cap, when the funding for the research unexpectedly changes and now comes through a for-profit entity, thus causing the entity to lose its cap-exempt status. In cases where the worker is unable to quickly obtain H-1B status based on a cap-subject H-1B petition or another work-authorized nonimmigrant status, the employment authorization proposal would provide a temporary bridge for continued employment of the worker when his or her departure would create substantial disruption to the employer?s biomedical research.)

(p) **Eligibility for employment authorization in compelling circumstances, Eligibility of principal alien.** An individual who is the principal beneficiary of an approved immigrant petition for classification under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Act may be eligible to receive employment authorization, upon application, if:

(i) In the case of an initial request for employment authorization, **the individual is in E-3, H-1B, H-1B1, O-1, or L-1** nonimmigrant status at the time the application for employment authorization is filed;

(Rajiv: This will not work if you are out of status)

(ii) An immigrant visa is not immediately available to the principal beneficiary based on his or her priority date at the time the application for employment authorization is filed; and

(Rajiv: Your priority date is not current; there is a wait, but not more than one year. If the wait is more than one year, you cannot get EAD or renewal of EAD. See next comment below.)

(iii) USCIS determines, as a matter of discretion, that the principal beneficiary demonstrates

compelling circumstances that justify the issuance of employment authorization.

(2) Eligibility of spouses and children. The family members, as described in

section 203(d) of the Act, of a principal beneficiary, who are in nonimmigrant status at the time the principal beneficiary applies for employment authorization under paragraph (p)(1) of this section, are eligible to apply for employment authorization provided that the principal beneficiary has been granted employment authorization under paragraph (p) of this section and such employment authorization has not been terminated or revoked. Such family members may apply for employment authorization concurrently with the principal beneficiary, but cannot be granted employment authorization until the principal beneficiary is so authorized. The validity period of employment authorization granted to family members may not extend beyond the validity period of employment authorization granted to the principal beneficiary.

(3) Subject to paragraph (p)(5) of this section, an alien may be eligible to receive **renewal of employment authorization** under paragraph (p) of this section, upon application, if:

(i) He or she is the principal beneficiary of an approved immigrant petition for classification under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Act and either:

(A) USCIS determines, as a matter of discretion, that the principal beneficiary **continues to demonstrate** compelling circumstances that justify the issuance of employment authorization, **OR**

(B) The difference between the principal beneficiary?s priority date and the date upon which immigrant visas are authorized for issuance for the principal beneficiary?s preference category and country of chargeability is 1 year or less according to the current Department of State Visa Bulletin; **OR**

(Rajiv: Your priority date is less than a year away)

(ii) Is a family member, as described under paragraph (p)(2) of this section, of a principal beneficiary satisfying the requirements under paragraph (p)(3)(i) of this section, except that the family member need not be maintaining nonimmigrant status at the time the principal beneficiary applies for renewal employment authorization under paragraph (p) of this section.

(Rajiv: your spouse and children could get EAD renewal even if they are out of status at the time of renewal)

(4) Application for employment authorization. To request employment authorization, an eligible applicant described in paragraphs (p)(1) or (2) of this section must file an application for employment authorization, or a successor form, with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions, including evidence of compelling circumstances. Such applicant is subject to the collection of his or her biometric information and the payment of any

biometric services fee as provided in the form instructions. Employment authorization under this paragraph may be granted solely in 1-year increments.

(5) Ineligibility for employment authorization. An alien is **not eligible** for employment authorization, including renewal of employment authorization, under this paragraph in the following circumstances:

(i) The individual has been **convicted of any felony or two or more misdemeanors**;

(Rajiv: No employment authorization or renewal, If convicted of a felony or multiple misdemeanors; by the way, you can probably also be deported)

OR

(ii) The principal beneficiary?s priority date is more than 1 year beyond the date immigrant visas were authorized for issuance for the principal beneficiary?s preference category and country of chargeability according to the Department of State Visa Bulletin current at the time the application for employment authorization, or successor form, is filed.

(Rajiv: Spouse and children will also not get EAD renewal if your PD is more than one year away)

PART 205 ? REVOCATION OF APPROVAL OF PETITIONS

3. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1324a, and 1186a.

4. Section 205.1 is amended by revising paragraphs (a)(3)(iii)(C) and (D) to read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * * (iii) * * *

(C) In employment-based preference cases, upon written notice of withdrawal filed by the petitioner to any officer of USCIS who is authorized to grant or deny petitions, where the withdrawal is filed less than 180 days after approval of the employment-based preference petition, provided that the revocation of a petition?s approval under this clause will not, by itself, impact a beneficiary?s ability to retain his or her priority date under 8 CFR 204.5(e). A petition that is withdrawn 180 days or more after approval remains approved unless its approval is revoked on other grounds. If an employment-based petition on behalf of an alien is withdrawn, the job offer of the petitioning employer is rescinded and the alien must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

(Rajiv: If an employer revokes your I-140180 days or more have passed after its approval, you will keep your priority date AND be able continue to extend your H-1 through any employer. But, you do have to start your green card again from the beginning.

If the employer revokes I-140LESS than 180 days have passed after I-140 approval, you will keep your priority date, but cannot extend H- based upon the approved and then revoked I-140.)

(D) Upon termination of the petitioning employer?s business less than 180 days after petition approval in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act, provided that the revocation of a petition?s approval under this clause will not, by itself, impact a beneficiary?s ability to retain his or her priority date under 8 CFR 204.5(e). If a petitioning employer?s business terminates 180 days or more after approval, the petition remains approved unless its approval is revoked on other grounds. If a petitioning employer?s business terminates, the job offer of the petitioning employer is rescinded and the beneficiary must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

(Rajiv: If an employer?s business terminates when180 days or more have passed after your I-140 approval, you will keep your priority date AND be able continue to extend your H-1 through any employer. But, you do have to start your green card again from the beginning.

If an employer?s business terminates whenLESS than 180 days have passed after I-140 approval, you will keep your priority date, but cannot extend H-1 based upon the approved and then revoked I-140.)

* * ** *

PART 214 -- NONIMMIGRANT CLASSES

5. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 105- 277, 112 Stat. 2681-641; Pub. L. 106-313, 114 Stat. 1251-1255; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

6. Section 214.1 is amended by adding a new paragraph (l) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * ** *

(l) Period of stay. (1) An alien admissible in E-1, E-2, E-3, H-1B, L-1, or TN

classification and his or her dependents may be admitted to the United States for the validity period of the petition, or for a validity period otherwise authorized for the E-1, E- 2, E-3, and TN classifications, plus an additional period of up to 10 days before the validity period begins and a 10-day period following the expiration of the validity period to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment. Unless authorized under 8 CFR 274a.12, the alien may not work except during the validity period.

(Rajiv: the above category visa holders have an additional 10 days to enter the USA before start date and leave the USA after end date of their petition.)

(2) An alien admitted or otherwise provided status in E-1, E-2, E-3, H-1B, H-1B1, L-1, or TN classification and his or her dependents shall not be considered to have failed to maintain nonimmigrant status solely on the basis of the cessation of the employment on which the alien?s classification was based for a one-time period during any authorized validity period. Such one-time period shall last **up to 60 days** or until the end of the authorized validity period, whichever is shorter.

(3) An alien in any authorized period described in paragraph (l) of this section may apply for and be granted an extension of stay under paragraph (c)(4) of this section or change of status under 8 CFR 248.1, if otherwise eligible. DHS may eliminate or shorten the 60-day period described in paragraph (l)(2) of this section as a matter of discretion and, unless otherwise authorized under 8 CFR 274a.12, the alien may not work during such period.

(Rajiv: All the above visa categories, including H-1B, will have a one-time, up to 60-days grace period to look for another job and apply again or apply for change of status to another category without having to leave the USA. You can stay in the USA, but cannot work during this time.)

7. Section 214.2 is amended by:

a. Adding new paragraphs (h)(2)(i)(H), (h)(8)(ii)(F), (h)(13)(iii)(C) through (E) and (h)(20);

b. Revising paragraphs (h)(4)(v)(C), (h)(13)(i)(A), and (h)(19)(iii)(B); and c. Removing the fifth sentence from paragraph (h)(9)(iv).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * ** *

(h) * * *

(2) * * *

(i) * * *

(H) H-1B portability. An eligible H-1B nonimmigrant is authorized to start concurrent or new employment under section 214(n) of the Act **upon the filing**, in accordance with 8 CFR 103.2(a), of a non-frivolous H-1B petition on behalf of such alien, or as of the requested start date, whichever is later.

(1) Eligible H-1B nonimmigrant. For H-1B portability purposes, an eligible H- 1B nonimmigrant is defined as an alien:

(i) Who has been lawfully admitted into the United States;

(ii) On whose behalf a non-frivolous H-1B petition for new employment has been filed, including a petition for new employment with the same employer, with a request to amend or extend the H-1B nonimmigrant?s stay, before the H-1B nonimmigrant?s period of stay authorized by the Secretary of Homeland Security expires; and

(iii) Who has not been employed without authorization in the United States from the time of last admission through the filing of the petition for new employment.

(2) Length of employment. Employment authorized under paragraph (h)(2)(i)(H) of this section automatically ceases upon the adjudication of the H-1B petition described in paragraph (h)(2)(i)(H)(1)(ii) of this section.

(3) Successive H-1B portability petitions. (i) **An alien maintaining authorization for employment under paragraph (h)(2)(i)(H) of this section, whose status, as indicated on the Arrival-Departure Record (Form I-94), has expired, shall be considered to be in a period of stay authorized by the Secretary of Homeland Security for purposes of paragraph (h)(2)(i)(H)(ii) of this section. If otherwise eligible under paragraph (h)(2)(i)(H) of this section, such alien may begin working in a subsequent position upon the filing of another non-frivolous H-1B petition or from the requested start date, whichever is later, notwithstanding that the previous H-1B petition upon which employment is authorized under paragraph (h)(2)(i)(H) of this section remains pending and regardless of whether the validity period of an approved H-1B petition filed on the alien?s behalf expired during such pendency.**

(ii) A request to amend the petition or for an extension of stay in any successive

H-1B portability petition cannot be approved if a request to amend the petition or for an extension of stay in any preceding H-1B portability petition in the succession is denied, unless the beneficiary?s previously approved period of H-1B status remains valid.

(iii) **Denial of a successive portability petition does not affect the ability of the H- 1B beneficiary to continue or resume working in accordance with the terms of an H-1B petition previously approved on behalf of the beneficiary if that petition approval remains valid and the beneficiary has maintained H-1B status or been in a period of authorized stay and has not been employed in the United States without authorization.**

(Rajiv: Pay attention to the part I have highlighted in this reg. The rest is reiteration of existing policy. Nothing new.

The highlighted part says, if your transfer or change of employer petition with Employer-1 is pending and your old approval has expired, you can file a transfer over to Emplyer-2 while the case with 1 is still pending .

You can also start working for Employer-2, even though your I-94 has already expired. Then if Employer-2?s case is denied, you can go back to any employer through whom you have an H-1 approval , IF, that approval is still valid.

These two provisions were not clear earlier. By the way, this regulation conflicts with USCIS regulation that REQUIRES employers to revoke an H-1 (except under some limited circumstances) once an employee leaves, or does not join a petitioning employer.)

* * ** *

(4) * * *

(v) * * *

(C) Duties without licensure. (1) In certain occupations which generally require licensure, a State may allow an individual without licensure to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, USCIS shall examine the nature of the duties and the level at which they are performed, as well as evidence provided by the petitioner as to the identity, physical location, and credentials of the individual(s) who will supervise the alien. If the facts demonstrate that the alien under supervision will fully perform the duties of the occupation, H classification may be granted.

(2) An H-1B petition filed on behalf of an alien who does not have a valid State or local license, where a license is otherwise required to fully perform the duties in that occupation, may be approved for a period of up to 1 year if:

(i) The license would otherwise be issued provided the alien was in possession of a valid social security number or was authorized for employment in the United States, and

(ii) The petitioner demonstrates, through evidence from the State or local licensing authority, that the only obstacle to the issuance of licensure is the lack of a social security number, a

lack of employment authorization, or both. The petitioner must demonstrate that the alien is fully qualified to receive the State or local license in all other respects, meaning that all educational, training, experience, and other requirements have been met. The alien must have filed an application for the license in accordance with applicable State or local rules and/or procedures, provided that State or local rules and/or procedures do not prohibit the alien from filing the license application without provision of a social security number or proof of employment authorization.

(3) An H-1B petition on behalf of an alien who has been previously accorded H- 1B classification under paragraph (h)(4)(v)(C)(2) of this section may not be approved unless the petitioner demonstrates that the alien has obtained the required license, is seeking to employ the alien in a position requiring a different license, or the alien will be employed in that occupation in a different location which does not require a state or local license to fully perform the duties of the occupation.

(Rajiv: There is nothing new here. This is just reiteration of existing policy.)

* * ** *

(8) * * *

(ii) * * *

(F) Cap-exemptions under sections 214(g)(5)(A) and (B) of the Act. An alien is not subject to the numerical limitations identified in section 214(g)(1)(A) of the Act if the alien qualifies for an exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(1) ?Institution of higher education? has the same definition as described at section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(2) A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if:

(i) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(ii) The nonprofit entity is operated by an institution of higher education;

(iii) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(iv) The nonprofit entity has, absent shared ownership or control, entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research and/or education, and a primary purpose of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

(3) An entity is considered a ?nonprofit entity? if it meets the definition described at paragraph (h)(19)(iv) of this section. ?Nonprofit research organization? and

?governmental research organization? have the same definitions as described at paragraph (h)(19)(iii)(C) of this section.

(4) An H-1B beneficiary who is not directly employed by a qualifying institution, organization or entity identified in sections 214(g)(5)(A) or (B) of the Act shall qualify for an exemption under such section if the H-1B beneficiary will spend the majority of his or her work time performing job duties at a qualifying institution, organization or entity and those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity, namely, either higher education, nonprofit research or government research. The burden is on the H-1B petitioner to establish that there is a nexus between the duties to be performed by the H-1B beneficiary and the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.

(5) If cap-exempt employment ceases, and if the alien is not the beneficiary of a new cap-exempt petition, then the alien will be subject to the cap if not previously counted within the 6-year period of authorized admission to which the cap-exempt employment applied. If cap-exempt employment converts to cap-subject employment subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the petition authorizing such employment consistent with paragraph (h)(11)(iii) of this section.

(6) Concurrent H-1B employment in a cap-subject position of an alien that qualifies for an exemption under section 214(g)(5)(A) or (B) of the Act shall not subject the alien to the numerical limitations in section 214(g)(1)(A) of the Act. When

petitioning for concurrent cap-subject H-1B employment, the petitioner must demonstrate that the H-1B beneficiary is employed in valid H-1B status under a cap exemption under section 214(g)(5)(A) or (B) of the Act, the beneficiary?s employment with the cap exempt employer is expected to continue after the new cap-subject petition is approved, and the beneficiary can reasonably and concurrently perform the work described in each employer?s respective positions.

(i) Validity of a petition for concurrent cap-subject H-1B employment approved under paragraph (h)(8)(ii)(F)(6) of this section cannot extend beyond the period of validity specified for the cap-exempt H-1B employment.

(ii) If H-1B employment subject to a cap exemption under section 214(g)(5)(A) or (B) of the Act is terminated by a petitioner, or otherwise ends before the end of the validity period listed on the approved petition filed on the alien?s behalf, the alien who is concurrently employed in a cap-subject position becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, unless the alien was previously counted with respect to the 6-year period of authorized H-1B admission to which the petition applies or another exemption applies. If such

an alien becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the cap-subject petition described in paragraph (h)(8)(ii)(F)(6) of this section consistent with paragraph (h)(11)(iii) of this section.

(Rajiv: There is nothing new here, also. This is just reiteration of existing policy.)

* * ** *

(13) * * * (i) * * *

(A) Except as set forth in 8 CFR 214.1(l) with respect to H-1B beneficiaries and their dependents and paragraph (h)(5)(viii)(B) of this section with respect to H-2A beneficiaries, a beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

* * ** *

(iii) * * *

(C) Calculating the maximum H-1B Admission Period. Time spent physically outside the United States exceeding 24 hours by an alien during the validity of an H-1B petition that was approved on the alien?s behalf shall not be considered for purposes of calculating the alien?s total period of authorized admission under section 214(g)(4) of the Act, regardless of whether such time is meaningfully interruptive of the alien?s stay in H- 1B status and the reason for the alien?s absence. Accordingly, such time may be recaptured in a subsequent H-1B petition on behalf of the alien, subject to the maximum period of authorized H-1B admission described in section 214(g)(4) of the Act.

(1) It is the H-1B petitioner?s burden to request and demonstrate the specific amount of time for recapture on behalf of the beneficiary. The beneficiary may provide appropriate evidence, such as copies of passport stamps, Arrival-Departure Records (Form I-94), and/or airline tickets, together with a chart, indicating the dates spent outside of the United States, and referencing the relevant independent documentary evidence, when seeking to recapture the alien?s time spent outside the United States. Based on the evidence provided, USCIS may grant all, part, or none of the recapture period requested.

(2) If the beneficiary was previously counted toward the H-1B numerical cap under section 214(g)(1) of the Act with respect to the 6-year maximum period of H-1B admission from which recapture is sought, the H-1B petition seeking to recapture a period of stay as an H-1B nonimmigrant will not subject the beneficiary to the H-1B numerical cap, notwithstanding whether the alien has been physically outside the United States for 1 year or more and would be otherwise eligible for a new period of admission under such section of the Act. An H-1B petitioner may either seek such recapture on behalf of the alien or, consistent with paragraph (h)(13)(iii) of this section, seek a new period of admission on behalf of the alien under section 214(g)(1) of the Act.

(Rajiv: There is nothing new here. This is just reiteration of existing policy.)

(D) Lengthy adjudication delay exemption from 214(g)(4) of the Act. (1) An alien who is in H-1B status or has previously held H-1B status is eligible for H-1B status beyond the 6-year limitation under section 214(g)(4) of the Act, if, prior to the 6-year limitation being reached, at least 365 days have elapsed since:

(i) The filing of a labor certification with the Department of Labor on the alien?s behalf, if such certification is required for the alien to obtain status under section 203(b) of the Act; or

(ii) The filing of an immigrant visa petition with USCIS on the alien?s behalf to accord classification under section 203(b) of the Act.

(2) H-1B approvals under paragraph (h)(13)(iii)(D) of this section may be granted in up to 1-year increments until either the approved permanent labor certification expires or a final decision has been made to:

(i) Deny the application for permanent labor certification, or, if approved, to revoke or invalidate such approval;

(ii) Deny the immigrant visa petition, or, if approved, revoke such approval;

(iii) Deny or approve the alien?s application for an immigrant visa or application to adjust status to lawful permanent residence; or

(iv) Administratively or otherwise close the application for permanent labor certification, immigrant visa petition, or application to adjust status.

(3) No final decision while appeal available or pending. A decision to deny or revoke an application for labor certification, or to deny or revoke the approval of an immigrant visa petition, will not be considered final under paragraphs (h)(13)(iii)(D)(2)(i) or (ii) of this section during the period authorized for filing an appeal of the decision, or while an appeal is pending.

(4) Substitution of beneficiaries. An alien who has been replaced by another alien, on or before July 16, 2007, as the beneficiary of an approved permanent labor certification may not rely on that permanent labor certification to establish eligibility for H-1B status based on this lengthy adjudication delay exemption. Except for a substitution of a beneficiary that occurred on or before July 16, 2007, an alien establishing eligibility for this lengthy adjudication delay

exemption based on a pending or approved labor certification must be the named beneficiary listed on the permanent labor certification.

(5) Advance filing. A petitioner may file an H-1B petition seeking a lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section within 6 months of the requested H-1B start date. The petition may be filed before 365 days have elapsed since the labor certification application or immigrant visa petition was filed with the Department of Labor or USCIS, respectively, provided that the application for labor certification or immigrantvisa petition must have been filed at least 365 days prior to the last day of the alien?s authorized 6-year period of H-1B admission under section 214(g)(4) of the Act. Such authorized 6-year period of H-1B status includes any prior or concurrent request to recapture unused H-1B, L-1A, or L-1B time spent outside of the United States. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act along with the exemption request, but in no case may the approved H-1B period of validity exceed the limits specified by paragraph (h)(9)(iii) of this section.

(Rajiv: This too is just reiteration of existing policy. *USCIS will need to clarify that even if there is a gap in H-1 status, we are allowed to file 6 months ahead of H-1 expiration. The underline part of the regulation seems to be incorrectly worded)

(6) Petitioners seeking exemption. The H-1B petitioner **need not be the employer that filed the application for labor certification or immigrant visa petition** that is used to qualify for this exemption. Separate requests for lengthy adjudication delay exemptions under paragraph (h)(13)(iii)(D) of this section may be based on separate, eligible labor certification applications or immigrant visa petitions on behalf of the same alien.

(7) **Subsequent exemption approvals after the 7th year.** Each exemption granted under paragraph (h)(13)(iii)(D) of this section affords the alien a new date at which the alien?s maximum period of admission expires. A petition for any subsequent extension under paragraph (h)(13)(iii)(D) of this section must include evidence that a qualifying labor certification or immigrant visa petition was filed at least 365 days prior to the last day of the alien?s authorized period of H-1B admission. **Such labor certification or immigrant visa petition need not be the same as that used to qualify for the initial exemption under paragraph (h)(13)(iii)(D) of this section**.

(8) Aggregation of time not permitted. A petitioner may not aggregate the number of days that have elapsed since the filing of one labor certification or immigrant visa petition with the number of days that have elapsed since the filing of another such application or petition to meet the 365-day requirement.

(9) Exemption eligibility. Only a principal beneficiary of a non-frivolous labor certification application or immigrant visa petition filed on his or her behalf may be eligible under paragraph (h)(13)(iii)(D) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

(10) Limits on future exemptions from the lengthy adjudication delay. An immigrant visa petition under section 203(b) of the Act cannot support a request for the lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section if the alien fails to file an

adjustment of status application or make an application for an immigrant visa within 1 year of an immigrant visa becoming immediately available. If the accrual of such 1-year period is interrupted by the unavailability of an immigrant visa, a new 1-year period shall be afforded when an immigrant visa again becomes immediately available. USCIS may excuse a failure to file in its discretion if the alien establishes that the failure to apply was due to circumstances beyond his or her control. The limitations described in this paragraph apply to any approved immigrant visa petition under section 203(b) of the Act, including petitions withdrawn by the petitioner or those filed by a petitioner whose business terminates 180 days after approval.

(Rajiv: Paragraph (10) is new, requiring us to file I-485 or Immigrant Visa within one year of the Priority Date becoming current, unless there is another retrogression.)

(E) Per-country limitation exemption from 214(g)(4) of the Act. An alien who currently maintains or previously held H-1B status, who is the beneficiary of an approved immigrant visa petition for classification under sections 203(b)(1), (2), or (3) of the Act, and who is eligible to be granted that immigrant status but for application of the per country limitation, is eligible for H-1B status beyond the 6-year limitation under 214(g)(4) of the Act. The petitioner must demonstrate such visa unavailability as of the date the H-1B petition is filed with USCIS and the unavailability must exist at time of the petition?s adjudication.

(1) Validity periods. USCIS may grant validity periods of petitions approved under this paragraph in increments of up to 3 years for as long as the alien remains eligible for this exemption.

(2) H-1B approvals under (h)(13)(iii)(E) of this section may be granted until a final decision has been made to:

(i) Revoke the approval of the immigrant visa petition; or

(ii) Approve or deny the alien?s application for an immigrant visa or application to adjust status to lawful permanent residence.

(3) Current H-1B status not required. An alien who is not in H-1B status at the time the H-1B petition on his or her behalf is filed, including an alien who is not in the United States, may seek an exemption of the 6-year limitation under 214(g)(4) of the Act under this clause, if otherwise eligible.

(4) Subsequent petitioners may seek exemptions. The H-1B petitioner need not be the employer that filed the immigrant visa petition that is used to qualify for this exemption. An H-1B petition may be approved under paragraph (h)(13)(iii)(E) of this section with respect to any approved immigrant visa petition, and a subsequent H-1B petition may be approved with respect to a different approved immigrant visa petition on behalf of the same alien.

(5) Advance filing. A petitioner may file an H-1B petition seeking a per-country limitation exemption under paragraph (h)(13)(iii)(E) of this section within 6 months of the requested H-1B start date. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act along with the exemption request, but in no case may the H-1B approval period exceed the limits specified by paragraph (h)(9)(iii) of this section.

(6) Exemption eligibility. Only the principal beneficiary of an approved immigrant visa petition for classification under sections 203(b)(1), (2), or (3) of the Act may be eligible under paragraph (h)(13)(iii)(E) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

(Rajiv: There is nothing new in the above provisions, just codification of existing policy.)

* * ** *

(19) * * *

(iii) * * *

(B) An affiliated or related nonprofit entity. A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if:

(1) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(2) The nonprofit entity is operated by an institution of higher education; or

(3) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

(4) The nonprofit entity has, absent shared ownership or control, entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research and/or education, and a primary purpose of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

* * ** *

(20) Retaliatory action claims. If credible documentary evidence is provided in support of a petition seeking an extension of H-1B stay in or change of status to another classification indicating that the beneficiary faced retaliatory action from his or her employer based on a report regarding a violation of the employer?s labor certification application obligations under section 212(n)(2)(C)(iv) of the Act, USCIS may consider a loss or failure to maintain H-1B status by the beneficiary related to such violation as due to, and commensurate with, ?extraordinary circumstances? as defined by 8 CFR 214.1(c)(4) and 8 CFR 248.1(b).

* * ** *

(Rajiv: Paragraph 20 is new, but USCIS was in fact already following this policy, albeit, inconsistently.)

PART 245 ? ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111 Stat. 2160,

2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII, 122 Stat. 754; 8 CFR part 2.

9. Revise § 245.15(n)(2) to read as follows:

§ 245.15 Adjustment of status of certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

* * ** *

(n)* * *

(2) Adjudication and issuance. Employment authorization may not be issued to an applicant for adjustment of status under section 902 of HRIFA until the adjustment application has been pending for 180 days, unless USCIS verifies that DHS records contain evidence that the applicant meets the criteria set forth in section 902(b) or 902(d) of HRIFA, and determines that there is no indication that the applicant is clearly ineligible for adjustment of status under section 902 of HRIFA, in which case USCIS may approve the application for employment authorization, and issue the resulting document, immediately upon such verification. If USCIS fails to adjudicate the application for employment authorization upon the expiration of the 180-day waiting period, or within 90 days of the filing of application for employment authorization, whichever comes later, the applicant shall be eligible for an employment authorization document. Nothing in this section shall preclude an applicant for adjustment of status under HRIFA from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the applicant may be eligible.

* * ** *

10. Add § 245.25 to read as follows:

§ 245.25 Adjustment of status of aliens with approved employment-based immigrant visa petitions; validity of petition and offer of employment.

(a) Validity of petition for continued eligibility for adjustment of status. An alien who has a pending application to adjust status to that of a lawful permanent resident based on an approved employment-based immigrant visa petition filed under section 204(a)(1)(F) of the Act on the applicant?s behalf **must have a valid offer of employment based on a valid petition at the time the application to adjust status is filed and at the time the alien?s application to adjust status is adjudicated, and the applicant must intend to accept such offer of employment. Prior to a final administrative decision on an application to adjust status, USCIS may require that the applicant demonstrate, or the applicant may affirmatively demonstrate to USCIS, on a designated form in accordance with the form instructions, or as otherwise determined by USCIS, with any required supporting documentary evidence, that:**

(1) The employment offer by the petitioning employer is continuing; or

(2) Under section 204(j) of the Act, the applicant has a new offer of employment from the petitioning employer or a different U.S. employer, or a new offer based on self-employment, in the same or a similar occupational classification as the employment offer under the qualifying petition, provided that:

(i) The alien?s application to adjust status based on a qualifying petition has been pending for 180 days or more; and

(ii) The approval of the qualifying petition has not been revoked.

In all cases, the applicant and his or her intended employer must demonstrate the intention for the applicant to be employed under the continuing or new employment offer (including self-employment) described in paragraphs (a)(1) and (2) of this section, as applicable, within a reasonable period upon the applicant?s grant of lawful permanent resident status.

(b) Evidence

(1) Continuing employment offer. Unless otherwise specified on the form or form instructions, for purposes of paragraph (a)(1) of this section, evidence of a continuing employment offer shall be provided in the form of a written attestation, signed by such employer, attesting that the employer continues to extend the original offer of employment and intends that the applicant will commence the employment described in the offer of employment within a reasonable period upon adjustment of status.

(2) New employment offer. Unless otherwise specified by a form or form instructions, for purposes of paragraph (a)(2) of this section, evidence of a new offer of employment that is in the same or a similar occupational classification as the employment offer under the approved petition as required by section 204(j) of the Act must include:

(i) A written attestation signed by the new employer describing the new employment offer, including its requirements and a description of the duties in the new position, and stating that the employer intends that the applicant will commence the employment described in the new employment offer within a reasonable period upon adjustment of status;

(ii) An explanation from the new employer establishing that the new employment offer and the employment offer under the approved petition are in the same or similar occupational classification, which may include material and credible information provided by another Federal government agency, such as information from the Standard Occupational Classification (SOC) system, or similar or successor system, administered by the Department of Labor; and

(iii) A copy of the receipt notice issued by USCIS, or if unavailable, secondary evidence showing that the alien?s application to adjust status based on such petition has been pending with USCIS for 180 days or more.

(3) Intention after grant of adjustment of status application. Evidence that the applicant intends to commence the employment described either in the continuing employment offer or, if pursuing an offer of new employment in accordance with section 204(j) of the Act, the new employment offer, within a reasonable period upon adjustment of

status, including a written attestation signed by the applicant.

(c) Definition of same or similar occupational classification. The term ?same occupational classification? means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved. The term ?similar occupational classification? means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.

(Rajiv: All of the above is a reiteration of existing process and procedure already used by USCIS.)

PART 274a ? CONTROL OF EMPLOYMENT OF ALIENS

11. The authority citation for part 274a continues to read as follows: Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2. 12. Amend § 274a.2 by revising paragraph (b)(1)(vii) to read as follows:

§ 274a.2 Verification of identity and employment authorization.

* * ** *

(b) ***

(1) ***

(vii) If an individual?s employment authorization expires, the employer, recruiter or referrer for a fee must reverify on the Form I-9 to reflect that the individual is still authorized to work in the United States; otherwise, the individual may no longer be employed, recruited, or referred. Reverification on the Form I-9 must occur not later than the date work authorization expires. If an Employment Authorization Document (Form I-766 or successor form) as described in § 274a.13(d) was presented for completion of the Form I-9 in combination with a Notice of Action (Form I-797C), or successor form, stating that the original Employment Authorization Document has been automatically extended for up to 180 days, reverification applies upon the expiration of the automatically extended validity period under § 274a.13(d) and not upon the expiration date indicated on the face of the alien?s Employment Authorization Document. In order to reverify on the Form I-9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and relate to the individual, reverify by noting the document?s identification number and expiration date, if any, on the Form I-9 and signing the attestation by a handwritten signature or electronic signature in accordance with paragraph (i) of this section.

* * ** *

13. Amend § 274a.12 by:

a. In paragraph (b)(9), removing ?;? at the end and adding in its place ?.?, and adding a new sentence to the end of the paragraph;

b. Adding and reserving new paragraphs (c)(27) to (c)(34); and c. Adding new paragraphs (c)(35) and (c)(36).

The additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * ** *

(b) * * *

(9) * * * In the case of a nonimmigrant with H-1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H);

* * ** *

(c) * * *

(35) An alien who is the principal beneficiary of a valid immigrant petition under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Act described as eligible for employment authorization in 8 CFR 204.5(p).

(36) A spouse or child of a principal beneficiary of a valid immigrant petition under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Act described as eligible for employment authorization in 8 CFR 204.5(p).

* * ** *

14. Amend § 274a.13 by:

a. Revising the paragraph (a) introductory text;

b. Removing the first sentence of paragraph (a)(1); and c. Revising paragraph (d).

The revisions read as follows:

§ 274a.13 Application for employment authorization.

(a) Application. An alien requesting employment authorization or an Employment Authorization Document (Form I-766 or successor form), or both, may be required to apply on a form designated by USCIS with any prescribed fee(s) in accordance with the form instructions. An alien may file such request concurrently with a related benefit request that, if granted, would form the basis for eligibility for employment authorization, only to the extent permitted by the form instructions.

* * ** *

(d) Renewal application.

(1) Automatic extension of Employment Authorization Documents. Except as otherwise provided in this chapter or by law, notwithstanding 8 CFR 274a.14(a)(1)(i), the validity period of an expiring Employment Authorization Document (Form I-766 or successor form) and, for aliens who are not employment authorized incident to status, also the attendant employment authorization, will be **automatically extended for an additional period not to exceed 180 days from the date of such document?s and such employment authorization?s expiration if a request for renewal on a form designated by USCIS is:**

(i) Properly filed as provided by form instructions before the expiration date shown on the face of the Employment Authorization Document;

(ii) Based on the same employment authorization category as shown on the face of the expiring Employment Authorization Document or is for an individual approved for Temporary Protected Status whose EAD was issued pursuant to 8 CFR 274a.12(c)(19); and

(iii) Based on a class of aliens whose eligibility to apply for employment authorization continues notwithstanding expiration of the Employment Authorization Document and is based on an employment authorization category that does not require adjudication of an underlying application or petition before adjudication of the renewal application, including aliens described in 8 CFR 274a.12(a)(12) granted Temporary Protected Status and pending applicants for Temporary Protected Status who are issued an EAD under 8 CFR 274a.12(c)(19), as may be announced on the USCIS Web site.

(2) Terms and conditions. Any extension authorized under this paragraph shall be subject to any conditions and limitations noted in the immediately preceding employment authorization.

(3) Termination. The period authorized by paragraph (d)(1) of this section shall automatically terminate the earlier of up to 180 days after the expiration date of the Employment Authorization Document (Form I-766, or successor form), or upon issuance of notification of a decision denying the renewal request. Nothing in paragraph (d) of this section shall affect DHS?s ability to otherwise terminate any Employment Authorization Document or extension period for such document and, as applicable, employment authorization, in accordance with 8 CFR 274a.14 or otherwise in this chapter, by written notice to the applicant, or by notice to a class of aliens published in the Federal Register.

(4) Unexpired Employment Authorization Documents. An Employment Authorization Document (Form I-766, or successor form) that has expired on its face is considered unexpired when combined with a Notice of Action (Form I-797C), or successor form which demonstrates that the requirements of paragraph (d)(1) of this section have been met.

(Rajiv: Para (d)(1) gives us permission to work for up to 180 even after EAD expires as long as we have filed within the life of the EAD, in the same category and our category does not require approval of some other petition. Also, expired EAD combined with timely filing for renewal is sufficient evidence for I-9. Note that H-4 EAD holders are NOT permitted this 180-day automatic extension.

Unfortunately, USCIS has also announced that they will remove the 90-days restriction on issuance of EAD?s. They intend to take their time, with no mandatory time limit.)

-------END-------

.....(Rajiv: We will keep adding/amending over the next few days)

Nonimmigrant Visas:
O-1 Visa [5]
L-1 Visa [6]
TN Visa [7]
Change of status [8]
E-2 Visa [9]
E-1 Visa [10]
E-3 Visa [11]
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[13] https://immigration.com/visa/nonimmigrant-visas/authorized-period-stay

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[25] https://immigration.com/greencard/green-card/perm-labor-certification
[26] https://immigration.com/greencard/green-card/priority-date
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