Final Rule : Period of Admission and Extension of Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities--TN Nonimmigrants

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 214 and 248

[CIS No. 2429-07; DHS Docket No. USCIS-2007-0056]

RIN 1615-AB64

Period of Admission and Extension of Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities--TN Nonimmigrants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to allow an increased period of admission and extension of stay for Canadian and Mexican citizens who seek temporary entry to the United States as professionals pursuant to the TN classification, as established by the North American Free Trade Agreement (NAFTA or Agreement). This final rule increases the maximum allowable period of admission for TN nonimmigrants from one year to three years, and allows otherwise eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years instead of the current maximum of one year. In addition, this rule grants the same periods of admission or extension to TD nonimmigrants, the spouses and unmarried minor children of TN nonimmigrants to run concurrent. The rule also removes the mention of specific petition filing locations from the TN regulations and replaces the outdated term “TC” (the previous term given to Canadian workers under the 1989 Canada-United States Free Trade Agreement) with “TN.” This rule will reduce the administrative burden of the TN classification on USCIS, and will ease the entry of eligible professionals to the United States.

DATES: This final rule is effective October 16, 2008.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer, Business and Trade Services, Office of Service Center Operations, U.S.

Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272-8410.

SUPPLEMENTARY INFORMATION:

I. Background

A. NAFTA and the TN Classification

NAFTA and the NAFTA Implementation Act, Public Law 103-182, redesignated section 214(e) of the Immigration and Nationality Act (INA) to create the "trade NAFTA" (TN) nonimmigrant classification and provide for the temporary entry of qualified business persons from each of the countries that signed the Agreement. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry as business persons to engage in professional business activities at a professional level in the United States. 8 CFR 214.6(a). DHS regulations currently require that TN nonimmigrants may be admitted to the United States for a period not to exceed one year. 8 CFR 214.6(e). The regulations further provide that TN professionals may apply for extensions of stay for a maximum period of one year. 8 CFR 214.6(h)(1).

B. Proposed Rule

On May 9, 2008, DHS published a notice of proposed rulemaking in the Federal Register at 73 FR 26340 proposing a change in the period of admission and extension of stay granted to TN nonimmigrants from Canada and Mexico engaged in professional business activities. The notice also proposed granting the same period of admission or extension of stay to TN dependents (TD nonimmigrants), removing outdated references to specific filing locations and prior requirements, and replacing the outdated term TC with the current TN term. Written comments to the proposed rule were due on or before June 9, 2008.

In this final rule, DHS is adopting the proposed rule with no changes. The proposed rule was, and this final rule is, intended to improve the administration of the TN program and make it more flexible and attractive to Canadian and Mexican professionals and to employers in the United States. Currently, DHS regulations require TN nonimmigrants, to either seek readmission in TN status or apply for extensions of stay annually if they wish to remain in the United States beyond the period of their initial admission. 8 CFR 214.6(h). This requirement involves the annual submission of documentation and payment of filing fees. By removing these types of administrative requirements on TN employees and their U.S. employers, DHS will further the intent of NAFTA to facilitate the entry of eligible professionals into the United States.

II. Comments Received in Response to the Proposed Rule

DHS received 80 comments in response to the proposed rule. The majority of commenters (76) supported this rulemaking. Many of these 76 commenters suggested additional changes or enhancements to the TN classification regulations which were not part of the proposed rule. Two commenters opposed the proposed rule. One of these two commenters asked questions about lawful permanent residence and educational opportunities for aliens in the TN classification, but did not express an opinion on the proposed rule. The second of these two commenters simply complained about a perceived slight to U.S. workers contained in another public comment. Many of the received comments raised issues that are beyond the scope of this rulemaking but will be mentioned briefly as part of this disposition of the comments.

A. Increase to Three Years for Admissions and Extensions of Stay

Comments on period of admission: The overwhelming majority of the commenters supported increasing the period of admission and extensions of stay granted to TN nonimmigrants from one to three years. Only two commenters opposed this proposal because they thought that jobs should be offered to U.S. workers rather than to foreign nationals. One commenter stated that the U.S. economy is suffering and jobs should thus be reserved for U.S. workers. The other commenter stated that the United States is presently flooded with immigrants and the TN program should be shut down while the country sorts out the problems with illegal immigrants present in the United States, and also made additional comments about aliens, politicians and the U.S. government in general.

Response to comments on period of admission: DHS has not adopted these comments in opposition. This rule does not make it easier to hire TN nonimmigrants by altering eligibility requirements, changing existing filing fee requirements, or expanding the principle of “dual intent.” Rather, this rule simply increases the amount of time granted to a TN nonimmigrant once all eligibility requirements have been established. This rule has nothing to do with permanent immigration or illegal immigrants presently within the United States.

B. Other Comments

Comments on dual intent: Thirteen commenters requested that TN nonimmigrants be granted “dual intent” and thereby be allowed to pursue permanent resident status while present in the United States in nonimmigrant status similar to the H-1B and L-1 nonimmigrant programs.

Response to comments on dual intent: The dual intent doctrine holds that even though a nonimmigrant visa applicant has previously expressed a desire to enter the United States as an immigrant, and may still have such a desire, that does not of itself preclude USCIS from issuing a nonimmigrant visa to him or her nor preclude his or her being a bona fide nonimmigrant. Matter of H-R-, 7 I&N Dec. 651, 654 (INS Reg. Comm'r 1958). See also INA section 214(h) (limiting dual intent to certain H, L, and V nonimmigrants); 8 U.S.C. 1184(h). Dual intent cannot be provided solely through

regulation; it must be authorized by statute and it is not authorized in the TN nonimmigrant context. Furthermore, temporary entry, as defined in Chapter 16 of the NAFTA, Article 1608, is “entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.” Congressional approval of this Article in the NAFTA treaty indicates that Congress did not intend TNs to have dual intent. Therefore, the commenters' suggestion will not be adopted because it is clearly inconsistent with Article 1608 and Congressional intent.

Comment on inability of Mexican TN nonimmigrants to apply for admission at the border: One commenter requested that Mexican TN nonimmigrants be able to apply for admission at designated ports-of-entry similar to Canadian TN nonimmigrants. Currently, Mexican workers are required to obtain visas from the Department of State (DOS) before entering the United States.

Response to comment on inability of Mexican TN nonimmigrants to apply for admission at the border: DHS appreciates the suggestion made by this commenter but the suggestion is outside the scope of this regulation. This rule deals with increasing the period of time granted to a TN nonimmigrant upon admission or pursuant to a timely filed request for extension of stay from a maximum of one year to a maximum of three years. Any additional regulatory changes, including a change to the place of admission, exceed the scope of this rule The commenter's suggestion, therefore, is not adopted.

Comment on advance approval of Canadian admission requests: One commenter requested that Canadian TN nonimmigrants be permitted to file petitions with USCIS Service Centers for admission as an alternative to requesting admission at U.S. ports-of-entry, so that applications for TN status can be approved in advance of entry dates rather than requiring intended employees to actually apply for status before knowing whether their applications will be approved.

Response to comment on advance approval of Canadian admission requests: DHS appreciates the suggestion made by this commenter. However, such reform exceeds the scope of the changes in the proposed rule and is not adopted in this final rule. The suggestion may be considered for future rulemaking involving TN nonimmigrants.

Comments on erroneous periods of admission: Several commenters suggested that some TN nonimmigrants have erroneously been admitted for three years instead of a validity period of one year. Thus, one commenter requested that this rule should have a retroactive effective date to correct this problem.

Response to comments on erroneous periods of admission: DHS understands these commenters' concerns. However, TN nonimmigrants who were admitted for a period of more than the one-year were granted that period of admission in violation of 8 CFR 214.6(e) as it existed prior to this rulemaking. Petitions must be processed in accordance with the regulations in effect when submitted, and this rule cannot deem those who were erroneously granted more than one year in the past to meet the requirements in this rule by making its provisions retroactive. Therefore, the commenter's suggestion was

not adopted. Each TN nonimmigrant erroneously admitted for periods of three years prior to the effective date of this rulemaking is encouraged to correct his or her Form I-94 at a port-of-entry or deferred inspection station to ensure compliance with existing regulations and to ensure that he or she does not remain in the U.S. for a period longer than is authorized by law.

Miscellaneous comments: Several commenters requested a more comprehensive reform of the TN regulations to include the following: more extensive definitions for the positions of Management Consultant and Scientific Technician/Technologist; increased vigilance against TN fraud; the establishment of clear guidelines in determining a "closely related" degree; an increase in the fee for port-of-entry processing of each TN application; a 30-day period during which the TN worker could enter the U.S. before the employment start date and/or remain outside the country without having the TN status invalidated; and work authorization for the spouses of TN nonimmigrants.

Response to miscellaneous comments: DHS appreciates the suggestions made by the commenters. However, such comprehensive reform of the TN program exceeds the scope of the proposed rule, which was simply focused on allowing TN nonimmigrants and their employers a more stable and predictable period of employment. Therefore, the commenters' suggestions are not adopted in this rule.

III. Regulatory Requirements

A. Regulatory Flexibility Act

1. Initial Regulatory Flexibility Analysis

DHS reviewed this rule in accordance with the Regulatory Flexibility Act and determined that this rule will reduce compliance costs on the regulated industries. This rule will reduce information collection costs for the public, and will reduce USCIS legal costs and the amount of fees collected, because TN and TD status holders will not have to renew their statuses each year. There are no provisions in this rule that add compliance costs. Therefore, DHS certifies that this rule would not have a significant economic impact on a substantial number of small entities.2. Final Regulatory Flexibility Analysis (FRFA)

In accordance with 5 U.S.C. 604, DHS performed a final regulatory flexibility analysis regarding the economic effects of this rule on small entities. DHS has not identified any duplication, overlap, or conflict of this rule with other Federal rules. Since DHS does not foresee the rule having an economic impact on small entities, this rule does not put forth significant alternatives to minimize impacts. The rule benefits the United States by reducing burden in the TN nonimmigrant status program. No cost increases due to the revised requirements are expected. USCIS invited the public to comment on the extent of any potential economic impact of this rule on small entities, the scope of these costs, a more accurate means for defining these costs, and the estimated cost to petitioning firms to comply with the new requirements. In response to those

requests, USCIS received no comments. Therefore, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no further regulatory flexibility analysis is required.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule has been designated as a “significant regulatory action” by the Office of Management and Budget (OMB) under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, an analysis of the economic impact of this rule has been prepared and submitted to the Office of Management and Budget (OMB) for review.

DHS has determined that this rule decreases the costs imposed by the TN nonimmigrant program on the government as well as the public. The changes made by this rule will result in more satisfaction with the TN program among TN nonimmigrants and their U.S. employers by increasing program flexibility and reducing time and travel restrictions. The expected effect is an increase in the number of TN nonimmigrants in the United States. A small economic benefit may result from the increased availability of scarce workers for U.S. employers in particular fields and industries. This rule will result in cumulative TN application fees decreasing by approximately $2.4 million per year. In addition, the total paperwork burden costs on the public will decrease by about 12,225 hours and $340,000 as a result of fewer required filings. Eventually, DOS and U.S. Customs and Border Protection annual fee collections from TN nonimmigrants will also decrease as a result of this rule. A copy of DHS' complete analysis is available in the rulemaking docket for this rule at www.regulations.gov, under Docket No. USCIS-2007-0056, or by calling the information contact listed above.

E. Executive Order 13132 (Federalism)

This rule will have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, by requiring TN and TD status renewals every three years instead of every year, this rule will reduce the volume of Form I-129, Petition for Nonimmigrant Worker, filings, Form I-907, Request for Premium Processing Service, filings, and Form I-539, Application To Extend/Change Nonimmigrant Status, filings per year, and so will reduce the aggregate paperwork burden on the public accordingly. Accordingly, USCIS has submitted the OMB Correction Worksheets (OMB-83C) to the Office of Management and Budget, reducing the burden hours and costs associated with these forms.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214--NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1258, 1281, 1282, 1301-1305 and 1372; § 643, Public Law 104-208, 110 Stat. 3009-708; 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; 8 CFR part 2.

§ 214.1 [Amended]

2. Section 214.1 is amended by:

a. Removing the designation “Cdn FTA, Professional” and “TC” from the list in paragraph (a)(2);

b. Removing the term “TC” and adding “TN” in its place in the first sentence in paragraph (c)(1).

3. Section 214.6 is amended by:

a. Revising the section heading and revising paragraphs (e), (g), and (h);

b. Redesignating paragraphs (j)(1), (j)(2) and (j)(3) as paragraphs (j)(2), (j)(3), and (j)(4), respectively;

c. Adding a new paragraph (j)(1);

d. Revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4); and by

e. Revising paragraph (k);

The addition and revisions read as follows:

§ 214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level.

* * * * *

(e) Procedures for admission. A citizen of Canada or Mexico who qualifies for admission under this section shall be provided confirming documentation and shall be admitted under the classification symbol TN for a period not to exceed three years. The conforming document provided shall bear the legend “multiple entry.” The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian Citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the TN applicant for admission shall be provided a DHS-issued receipt on the appropriate form.

* * * * *

(g) Readmission. (1) With a Form I-94. An alien may be readmitted to the United States in TN classification for the remainder of the authorized period of TN admission on Form I-94, without presentation of the letter or supporting documentation described in paragraph (d)(3) of this section, and without the prescribed fee set forth in 8 CFR

103.7(b)(1), provided that the original intended professional activities and employer(s) have not changed, and the Form I-94 has not expired.

(2) Without a valid I-94. If the alien seeking readmission to the United States in TN classification is no longer in possession of a valid, unexpired Form I-94, and the period of initial admission in TN classification has not lapsed, then a new Form I-94 may be issued for the period of validity that remains on the TN nonimmigrant's original Form I-94 with the legend “multiple entry” and the alien can then be readmitted in TN status if the alien presents alternate evidence as follows:

(i) For Canadian citizens, alternate evidence may include, but is not limited to, a fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s).

(ii) For Mexican citizens seeking readmission as TN nonimmigrants, alternate evidence shall consist of presentation of a valid unexpired TN visa and evidence of a previous admission.

(h) Extension of stay. (1) Filing. A United States employer of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status, or a United States entity (in the case of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status and is employed by a foreign employer), may request an extension of stay, subject to the following conditions:

(i) An extension of stay must be requested by filing the appropriate form with the fee provided at 8 CFR 103.7(b)(1), in accordance with the form instructions with USCIS.

(ii) The beneficiary must be physically present in the United States at the time of the filing of the appropriate form requesting an extension of stay as a TN nonimmigrant. If the alien is required to leave the United States for any reason while the petition is pending, the petitioner may request that USCIS notify the consular office where the beneficiary is required to apply for a visa or, if visa exempt, a DHS-designated port-of-entry where the beneficiary will apply for admission to the United States, of the approval.

(iii) An extension of stay in TN status may be approved by USCIS for a maximum period of three years.

(iv) There is no specific limit on the total period of time an alien may be in TN status provided the alien continues to be engaged in TN business activities for a U.S. employer or entity at a professional level, and otherwise continues to properly maintain TN nonimmigrant status.

(2) Readmission at the border. Nothing in paragraph (h)(1) of this section shall preclude a citizen of Canada or Mexico who has previously been admitted to the United States in TN status, and who has not violated such status while in the United States, from applying at a DHS-designated port-of-entry, prior to the expiration date of the previous

period of admission, for a new three-year period of admission. The application for a new period of admission must be supported by a new letter from the United States employer or the foreign employer, in the case of a citizen of Canada who is providing prearranged services to a United States entity, which meets the requirements of paragraph (d) of this section, together with the appropriate filing fee as noted in 8 CFR 103.7(b)(1). Citizens of Mexico must present a valid passport and a valid, unexpired TN nonimmigrant visa when applying for readmission, as outlined in paragraph (d)(1) of this section.
* * * * *

(j) * * * (1) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status, if otherwise admissible, may be admitted initially, readmitted, or granted a change of nonimmigrant status or an extension of his or her period of stay for the same period of time granted to the TN nonimmigrant. Such spouse or unmarried minor children shall, upon approval of an application for admission, readmission, change of status or extension of stay be classified as TD nonimmigrants. A request for a change of status to TD or an extension of stay of a TD nonimmigrant may be made on the appropriate form together with appropriate filing fees and evidence of the principal alien's current TN status.

(2) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired TD nonimmigrant visa unless otherwise exempt under 8 CFR 212.1.

(3) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be issued confirming documentation bearing the legend “multiple entry.” There shall be no fee required for admission of the spouse and unmarried minor children.

(4) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall not accept employment in the United States unless otherwise authorized under the Act.

(k) Effect of a strike. (1) If the Secretary of Labor certifies or otherwise informs the Director of USCIS that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such dispute, the United States may refuse to issue an immigration document authorizing the entry or employment of such an alien.

(2) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, or whether USCIS has been otherwise informed that such a strike or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute

involving a work stoppage of workers, but is subject to the following terms and conditions:

(i) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated in the same manner as all other TN nonimmigrants;

(ii) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(iii) Although participation by a TN nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for removal, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to removal.

(3) If there is a strike or other labor dispute involving a work stoppage of workers in progress but such strike or other labor dispute is not certified under paragraph (k)(1) of this section, or USCIS has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, Director of USCIS shall not deny a petition or deny entry to an applicant for TN status based upon such strike or other labor dispute.

PART 248--CHANGE OF NONIMMIGRANT CLASSIFICATION

4. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

5. Section 248.3 is amended by removing the term “TC” and adding the term “TN” in its place in the first sentence of paragraph (a).

September 15	Signed
_____	_____
Dated:	Michael Chertoff, Secretary.

8 CFR 214.1(c)

(c) Extension of stay --

(1) Filing on Form I-129. An employer seeking the services of an E-1, E-2, H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, R-1, or TN nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I-129. The petition must be filed with the fee required in § 103.7 of this chapter, and the initial evidence specified in § 214.2, and on the petition form. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases dependents of the worker should file on Form I-539. (Amended 10/16/08; 73 FR 61332) (Amended 6/11/01; 66 FR 31107) (Amended 3/17/00; 65 FR 14774)

(2) Filing on Form I-539. Any other nonimmigrant alien, except an alien in F or J status who has been granted duration of status, who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay on Form I-539 with the fee required in § 103.7 of this chapter together with any initial evidence specified in the applicable provisions of § 214.2, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K-3/K-4 status must do so in accordance with § 214.2(k)(10). (Amended 8/14/01; 66 FR 42587)

(3) Ineligible for extension of stay. A nonimmigrant in any of the following classes is ineligible for an extension of stay:

(i) B-1 or B-2 where admission was pursuant to the Visa Waiver Pilot Program;

(ii) C-1, C-2, C-3;

(iii) D-1, D-2;

(iv) K-1, K-2;

(v) Any nonimmigrant admitted for duration of status, other than as provided in Sec. 214.2(f)(7); (Amended 3/17/00; 65 FR 14774)

(vi) Any nonimmigrant who is classified pursuant to section 101(a)(15)(S) of the Act beyond a total of 3 years. or (Amended 3/17/00; 65 FR 14774) (Added 8/25/95; 60 FR 44260)

(vii) Any nonimmigrant who is classified according to section 101(a)(15)(Q)(ii) of the Act beyond a total of 3 years. (Added 3/17/00; 65 FR 14774)

(4) Timely filing and maintenance of status. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act. (Revised effective 4/1/97; 62 FR 10312)

(5) Decision in Form I-129 or I-539 extension proceedings. Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539.