

Amerasian, in any case, other than a case described in §213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I-134 or Form I-361, although the person who executes Form I-361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of §204.4(i) of this chapter.

PART 214—NONIMMIGRANT CLASSES

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AUTHORITY: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 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 Requirements for admission, extension, and maintenance of status.

(a) *General.* (1) *Nonimmigrant classes.* For the purpose of administering the nonimmigrant provisions of the Act, the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

- (i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;
- (ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a non-immigrant classified under section 101(a)(15) (H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien’s spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiance(e) and (K)(ii) for the fiance(e)’s children;

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien’s spouse and children; and

(vii) Section 101(a)(15)(Q)(ii) is divided to create a (Q)(iii) for subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(Q)(ii) of the Act.

(2) *Classification designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A-1.
101(a)(15)(A)(ii)	A-2.
101(a)(15)(A)(iii)	A-3.
101(a)(15)(B)(i)	B-1.
101(a)(15)(B)(ii)	B-2.
101(a)(15)(C)(i)	C-1.
101(a)(15)(C)(ii)	C-2.
101(a)(15)(C)(iii)	C-3.
101(a)(15)(D)(i)	D-1.
101(a)(15)(D)(ii)	D-2.
101(a)(15)(E)(i)	E-1.
101(a)(15)(E)(ii)	E-2.
101(a)(15)(F)(i)	F-1.
101(a)(15)(F)(ii)	F-2.
101(a)(15)(G)(i)	G-1.
101(a)(15)(G)(ii)	G-2.
101(a)(15)(G)(iii)	G-3.
101(a)(15)(G)(iv)	G-4.
101(a)(15)(g)(v)	G-5.
101(a)(15)(H)(i)(A)	H-1A.
101(a)(15)(H)(i)(B)	H-1B.
101(a)(15)(H)(ii)(A)	H-2A.
101(a)(15)(H)(ii)(B)	H-2B.
101(a)(15)(H)(iii)	H-3.
101(a)(15)(H)(iv)	H-4.
101(a)(15)(I)	I.
101(a)(15)(J)(i)	J-1.
101(a)(15)(J)(ii)	J-2.
101(a)(15)(K)(i)	K-1.
101(a)(15)(K)(ii)	K-2.
101(a)(15)(L)(i)	L-1.
101(a)(15)(L)(ii)	L-2.
101(a)(15)(M)(i)	M-1.
101(a)(15)(M)(ii)	M-2.
101(a)(15)(N)(i)	N-8.
101(a)(15)(N)(ii)	N-9.
101(a)(15)(O)(i)	O-1.
101(a)(15)(O)(ii)	O-2.
101(a)(15)(O)(iii)	O-3.

Section	Designation
101(a)(15)(P)(i)	P-1.
101(a)(15)(P)(ii)	P-2.
101(a)(15)(P)(iii)	P-3.
101(a)(15)(P)(iv)	P-4.
101(a)(15)(Q)(i)	Q-1.
101(a)(15)(Q)(ii)	Q-2.
101(a)(15)(Q)(iii)	Q-3.
101(a)(15)(R)(i)	R-1.
101(a)(15)(R)(ii)	R-2.
101(a)(15)(S)(i)	S-5.
101(a)(15)(S)(ii)	S-6.
101(a)(15)(S) qualified family members ..	S-7.
Cdn FTA, Professional	TC.
NAFTA, Principal	TN.
NAFTA, Dependent	TD.
Visa Waiver, Business	WB.
Visa Waiver, Tourist	WT.

(3) *General requirements.* Every non-immigrant alien who applies for admission to, or an extension of stay in, the United States, shall establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien shall present a valid passport and valid visa unless either or both documents have been waived. However, an alien applying for extension of stay shall present a passport only if requested to do so by the Service. The passport of an alien applying for admission shall be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien shall agree to abide by the terms and conditions of his or her admission. The passport of an alien applying for extension of stay shall be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien shall agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension. The alien shall also agree to depart the United States at the expiration of his or her authorized period of admission or extension, or upon abandonment of his or her authorized non-immigrant status. At the time a non-immigrant alien applies for admission or extension of stay he or she shall post a bond on Form I-352 in the sum of not less than \$500, to insure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the di-

rector, immigration judge, or Board of Immigration Appeals.

(b) *Readmission of nonimmigrants under section 101(a)(15) (F), (J), (M), or (Q)(i) to complete unexpired periods of previous admission or extension of stay—* (1) *Section 101(a)(15)(F).* The inspecting immigration officer shall readmit for duration of status as defined in §214.2(f)(5)(iii), any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(F) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;
- (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and
- (iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and either:
 - (A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or
 - (B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(2) *Section 101(a)(15)(J).* The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any non-immigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(J) of the Act, if the alien:

- (i) Is admissible;
- (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;

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(iii) Is in possession of a valid passport unless exempt from the requirement for the presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay or copy three of the last Form IAP-66 issued to the alien. Form I-94 or Form IAP-66 must show the unexpired period of the alien's stay endorsed by the Service.

(3) *Section 101(a)(15)(M)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(M) of the Act, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence not exceeding thirty days solely in contiguous territory;

(iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

(4) *Section 101(a)(15)(Q)(ii)*. The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence from the United States not exceeding 30 days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport;

(iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay. The principal alien must also present a Certification Letter issued by the Department of State's Program Administrator.

(c) *Extensions of stay*—(1) *Filing on Form I-129*. An employer seeking the services of an E-1, E-2, H-1A, 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 TC 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.

(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.

(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 §214.2(f)(7);

(vi) Any nonimmigrant who is classified pursuant to section 101(a)(15)(S) of the Act beyond a total of 3 years; or

(vii) Any nonimmigrant who is classified according to section 101(a)(15)(Q)(ii) of the Act beyond a total of 3 years.

(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.

(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.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or, pursuant to notification in the FEDERAL REGISTER, on the basis of national security, diplomatic, or public safety reasons.

(e) *Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or sec-

tion 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(f) *False information.* A condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Act.

(g) *Criminal activity.* A condition of a nonimmigrant's admission and continued stay in the United States is obedience to all laws of United States jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(1)(C)(i) of the Act.

[26 FR 12067, Dec. 16, 1961, as amended at 36 FR 8048, Apr. 29, 1971; 37 FR 14288, June 19, 1972; 43 FR 12674, Mar. 27, 1978; 44 FR 65727, Nov. 14, 1979; 48 FR 14582, Apr. 5, 1983; 48 FR 20685, May 9, 1983; 48 FR 30350, July 1, 1983; 52 FR 45446, Nov. 30, 1987; 56 FR 38333, Aug. 13, 1991; 59 FR 1463, Jan. 11, 1994; 60 FR 44266, Aug. 25, 1995; 60 FR 52248, Oct. 5, 1995; 62 FR 10349, Mar. 6, 1997; 65 FR 14777, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 43531, July 13, 2000, in § 214.1, paragraph (c)(1) was amended by removing the reference to "H-2A," from the first sentence and by adding a

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new sentence immediately after the first sentence, effective Nov. 13, 2000. At 65 FR 67617, Nov. 13, 2000, the effective date of the amendment was delayed until Oct. 1, 2001. For the convenience of the user, the added text is set forth as follows:

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

* * * * *

(c) * * *

(1) * * * An employer seeking extension of services for an H-2A must petition on Form ETA-9079 and ETA-9079W and file with the Department of Labor. * * *

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

The general requirements in §214.1 are modified for the following non-immigrant classes:

(a) Foreign government officials—(1) General. The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a non-immigrant under section 101(a)(15)(A) of the Act. An alien who has a non-immigrant status under section 101(a)(15)(A)(i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section (101)(a)(15)(A)(iii) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he/she intends to continue to employ the applicant and describing the type of work the applicant will perform.

(2) Definition of A-1 or A-2 dependent. For purposes of employment in the United States, the term dependent of an A-1 or A-2 principal alien, as used in §214.2(a), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer

or employee assigned to a diplomatic or consular office in the United States:

(i) Spouse;

(ii) Unmarried children under the age of 21;

(iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability.

(3) Applicability of a formal bilateral agreement or an informal de facto arrangement for A-1 or A-2 dependents. The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him/her in the United States.

(4) Income tax, Social Security liability; non-applicability of certain immunities. Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity