

that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future capacity should generally be realizable within five years from the date the alien commences normal business activity of the enterprise.

(p) *Solely to develop and direct.* The business or individual treaty investor does or will develop and direct the enterprise by controlling the enterprise through ownership of at least 50% of the business, by possessing operational control through a managerial position or other corporate device, or by other means.

(q) *Executive or supervisory character.* The executive or supervisory element of the employee's position must be a principal and primary function of the position and not an incidental or collateral function. Executive and/or supervisory duties grant the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof.

(1) An executive position provides the employee great authority to determine policy of and direction for the enterprise.

(2) A position primarily of supervisory character grants the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees.

(r) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the enterprise.

(1) The essential nature of the alien's skills to the employing firm is determined by assessing the degree of proven expertise of the alien in the area of operations involved, the uniqueness of the specific skill or aptitude, the length of experience and/or training with the firm, the period of training or other experience necessary to perform effectively the projected duties, and the salary the special qualifications can command. The question of special skills and qualifications must be determined by assessing the circumstances on a case-by-case basis.

(2) Whether the special qualifications are essential will be assessed in light of all circumstances at the time of each visa application on a case-by-case basis. A skill that is unique at one point may become commonplace at a later date. Skills required to start up an enterprise may no longer be essential after initial operations are complete and are running smoothly. Some skills are essential only in the short-term for the training of locally-hired employees. Long-term essentiality might, however, be established in connection with continuous activities in such areas as product improvement, quality control, or the provision of a service not generally available in the United States.

(s) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[62 FR 48154, Sept. 12, 1997]

§ 41.52 Information media representative.

(a) *Representative of foreign press, radio, film, or other information media.* An alien is classifiable as a non-immigrant information media representative if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(I) and is a representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such a medium having home offices in the United States.

(b) *Classification when applicant eligible for both I visa and E visa.* An alien who will be engaged in foreign information media activities in the United States and meets the criteria set forth

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in paragraph (a) of this section shall be classified as a nonimmigrant under INA 101(a)(15)(I) even if the alien may also be classifiable as a nonimmigrant under the provisions of INA 101(a)(15)(E).

(c) *Spouse and children of information media representative.* The spouse or child of an information media representative is classifiable under INA 101(a)(15)(I) if accompanying or following to join the principal alien.

§ 41.53 Temporary workers and trainees.

(a) *Requirements for H classification.* An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS, or by the Department of Labor in the case of temporary agricultural workers, of a petition to accord such classification or of the extension by INS of the period of authorized entry in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by the Immigration and Naturalization Service or by the Department of Labor does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Alien not entitled to H classification.* The consular officer must suspend action on this alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not entitled to the classification as approved.

(e) *"Trainee" defined.* The term *Trainee*, as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks

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to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

[57 FR 31449, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996; 65 FR 52306, Aug. 29, 2000]

§ 41.54 Intracompany transferees (executives, managers, and specialists).

(a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) In the case of an individual petition, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by INS of a blanket petition

(i) listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L) or

(ii) to accord such classification to qualified aliens who are being transferred to qualifying positions identified in such blanket petition; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* (1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not