

ALERTS

Immigration Update

01.28.2013

Plan ahead for E-3 Extensions

E-3 visas are available by treaty to Australian nationals who seek to be employed in the US in a specialty occupation. They are initially issued for two years and can be renewed without limit. However the rules for applying for extension of E-3 status stateside are quite unique. Federal regulations allow for a person lawfully employed under certain nonimmigrant classifications, including E-2, H-1B, J-1, L-1, O-1 and TN, who timely files a petition to extend their status automatically be given a 240 day period of continued employment authorization while the petition is pending from the date of the existing expiration of their underlying status. This means that if an employer has timely filed an employee's H-1B extension petition, for example, prior to the H-1B expiration date, and the extension is not approved prior to that date, the employee is authorized to continue working for that employer for an additional 240 days from the date of the existing status expiration or until the extension is granted and the employee has a new period of H-1B status, whichever comes first.

However, please note, that this "240 day rule" does not apply to foreign nationals in E-3 status. Thus, if an E-3 extension petition is not approved prior to the underlying expiration date, the E-3 employee must be terminated and may not be rehired until the new period of E-3 status is granted. E-3 Extension of stay or change of employer petitions are not eligible for expedited adjudication under the premium processing program. As such, it is important that employers file E-3 extension petitions as early as possible, ideally six months prior to the expiration date, in order to maintain an employee's uninterrupted E-3 authorized employment. The other option is for the E-3 foreign national to leave the US prior to their expiration date and reapply for a new E-3 visa at a US Consulate abroad. All Consulates in Australia process E-3 visa applications. Most Consulates in Canada will process E-3 renewals.