



U.S. Citizenship
and Immigration
Services

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HQ 70/6.2.8

Memorandum

TO: Field Leadership
Donald Neufeld

FROM: Donald Neufeld
Deputy Associate Director, Domestic Operations

SUBJECT: Adjudicator's Field Manual Update: Chapter 31: Accepting and Adjudicating H-1B Petitions When a Required License is not Available Due to State Licensing Requirements Mandating Possession of a Valid Immigration Document as Evidence of Employment Authorization

This memorandum provides guidance to adjudication officers in situations where professional licensure is required for a particular H-1B specialty occupation. USCIS is aware that in certain cases the alien beneficiary of an H-1B petition cannot obtain a license that is necessary to practice his or her profession from the State or other licensing authority without presenting, as a prerequisite, evidence of an approved H-1B petition on that alien's behalf. This creates an adjudicative difficulty for USCIS because approval of the H-1B petition may itself be contingent on the alien beneficiary's possession of the required license. USCIS is responding to these "Catch-22" situations by allowing for the *temporary* approval of the petition, providing all other requirements are met. USCIS's approval of an H-1B petition on the alien beneficiary's behalf in such cases is not authorization for the beneficiary to practice his or her profession without the required license. It is merely a means to facilitate the State or local licensing authority's issuance of such a license to the alien, provided all other requirements are satisfied.

USCIS regulations at 8 CFR 214.2(h)(4)(v) provide that if an occupation requires a state or local license to fully perform the duties of the occupation, the alien must have the license prior to the approval of the petition. Some States, however, will not issue an alien a state license unless the alien presents evidence to the State board that they are legally authorized to be employed in the United States. In the case of an H-1B nonimmigrant alien, some States require the alien to establish to the State board that they have been granted H-1B status as a prerequisite to issuing the license. For example, certain State Boards of Pharmacy will not issue a pharmacist license until the alien can present evidence of work authorization.

USCIS has followed similar guidance, applicable in other contexts, that was issued under the Legacy Immigration and Naturalization Service. The INS Memorandum, dated November 20,

Memorandum for Regional Directors, et al.

Subject: *AFM* Update: Chapter 31: Accepting and Adjudicating H-1B Petitions When a Required License is not Available Due to State Licensing Requirements of an Immigration Document (ADXX-XX).

2001, instructed adjudicators to approve H-1B petitions for a **one-year** period for teachers who could not obtain state licensure unless they could obtain social security numbers, which in turn could not be obtained unless they were already authorized to work in the U.S. At the end of the one-year period the petitioner was then required to file another petition with a request for extension, and also present evidence at such time that the license had in fact been obtained.

This AFM update instructs adjudicators to approve an H-1B petition for a **one-year** validity period if a State or local license to engage in the profession is required and the appropriate licensing authority will not grant such license to an alien absent evidence that the alien has been granted H-1B status. As a condition to approving such a petition, the alien must demonstrate that he or she has filed an application for such license in accordance with State or local rules and procedures. Further, prior to approving an H-1B petition under such circumstances, adjudicators should verify that the alien beneficiary is fully qualified to receive the State or local license, meaning that all educational, training, experience, and other substantive requirements must be met at the time of filing the petition (where appropriate, the adjudicator may issue a request for evidence). It should be noted that the approval of any such H-1B petition shall not constitute approval by USCIS for the alien beneficiary to engage in any activity requiring possession of such State or local license. Any petition that requests an extension of stay on behalf an alien who has been granted H-1B status under this provisional measure must show that the alien has obtained the requisite license. If the alien has not obtained the requisite license at the time the petition and extension are filed, such petition will be denied.

Questions regarding this guidance should be directed through appropriate channels to the Office of Service Center Operations.

1. Section 31.3(d) in Chapter 31 of the *Adjudicator's Field Manual* is amended to include the following new paragraphs at AFM 31.3(d)(3) to read as follows:

31.3 H-1B Classification and Documentary Requirements

* * * * *

(d) Documentation.

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(3) Adjudicators may face situations where State or Local licensure is required to engage in a particular H-1B specialty occupation but the alien beneficiary of an H-1B petition cannot obtain that license without presenting, as a prerequisite, evidence of an approved H-1B petition on that alien's behalf. A similar "catch 22" scenario exists where a State requires an applicant for a license to present a social security number that is valid for employment but the alien cannot obtain a social security number until he or she has been granted H-1B status.

Memorandum for Regional Directors, et al.

Subject: *AFM* Update: Chapter 31: Accepting and Adjudicating H-1B Petitions When a Required License is not Available Due to State Licensing Requirements of an Immigration Document (ADXX-XX).

Under such circumstances, adjudicators should verify that that the alien beneficiary is fully qualified to receive the State or local license, meaning that all educational, training, experience, and other substantive requirements must be met at the time of filing the petition. The petitioner must demonstrate that the alien beneficiary has in fact filed an application for such State or local license in accordance with the requirements of the State or local jurisdiction in advance of being granted employment authorization in the U.S. Adjudicators are instructed to approve the petition for a **one-year** validity period, *provided* that the sole reason why the alien beneficiary does not possess such license is that the appropriate licensing authority will not grant such license to an alien absent evidence that the alien has been granted H-1B status. Approval of such a petition does not constitute authorization by USCIS for the alien to engage in any activities requiring such licensure. Any petition that requests an extension of stay beyond the one-year validity period on behalf an alien who has been granted H-1B status under this provisional measure must show that the alien has obtained the requisite license. If the alien has not obtained the license at the time the petition and extension are filed, such petition will be denied.

2. The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, a new entry to read:

AD XX-XX
[INSERT
SIGNATURE
DATE]

Chapter 31.3

Adds guidance relating to the licensure requirements for H-1B petitions where full licensure is dependent upon receipt of a preceding immigration benefit.

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