



August 17, 2011

PM-602-0045

## Policy Memorandum

SUBJECT: Changes to B-2 Status and Extensions of B-2 Status for Cohabiting Partners and Other Nonimmigrant Household Members; Revisions to *Adjudicator's Field Manual (AFM)* Chapters 30.2 and 30.3; *AFM* Update AD11-27

### Purpose

This Policy Memorandum (PM) ensures that U.S. Citizenship and Immigration Services (USCIS) uniformly and consistently processes Form I-539 for changes to and extensions of B-2 status for cohabiting nonimmigrant partners and other household members of principal nonimmigrants.

### Scope

Unless specifically exempted herein, this PM applies to all USCIS employees.

### Authority

Sections 214(a)(1) and 248(a) of the Immigration and Nationality Act (INA);  
8 U.S.C. §§ 1184(a)(1) and 1258(a); 8 CFR 214.2(b)(1) and 248.1(a)

### Background

In some circumstances, elderly parents, cohabiting nonimmigrant partners, and other household members of principal nonimmigrants may be ineligible for derivative status. For purposes of this memorandum, a "household member" of a principal nonimmigrant is an alien who regularly resides in the same dwelling as the principal nonimmigrant and with whom the principal nonimmigrant maintains the type of relationship and care as one normally would expect between nuclear family members. There are also circumstances when it may be inconvenient or impossible for spouses or children of principal nonimmigrant aliens to apply for the proper derivative status. These aliens may seek B-2 visas, or change their status to B-2, to allow them to reside with the principal nonimmigrant visa holder who is in the United States in another status (H-1B, F-1, etc.). Department of State (DOS) guidance provides for issuance of B-2 visas to these household members. See 9 FAM 41.31 N14.4. DOS guidance directs consular officers to notate the B-2 visa with the principal nonimmigrant's visa type and duration, and to advise the B-2 visa holder to seek admission for one year at the point of entry if the B-2 visa holder plans to stay in the United States more than 6 months. Applicants may also seek extensions in six month increments from the Department of Homeland Security (DHS) for the duration of the principal alien's nonimmigrant status. See 8 CFR 214.2. USCIS guidance relating to B-2 visa extensions

is silent on this type of extension. This guidance is intended to ensure USCIS adjudicates these applications uniformly and consistently with the manner in which DOS issues the visas.

### **Policy**

This policy does not change eligibility requirements for change of status to B-2, or extension of B-2 status. Rather, it clarifies that such a change and/or one or more extensions are appropriate in the exercise of discretion for household members, including the cohabiting partner of a principal nonimmigrant visa holder, when other eligibility requirements are met. When evaluating an application for change to or extension of B-2 status based on cohabitation, the cohabiting partner's relationship to the nonimmigrant principal alien in another status will be considered a favorable factor in allowing the household member to obtain or remain eligible for B-2 classification. When considering a change of status and/or multiple extensions for the cohabiting partner or other household member, the finite nature of the stay, rather than the duration of the stay or number of extensions sought, is controlling with respect to nonimmigrant intent. For example, the visit should be considered temporary even if the status may be extended several times over several years in order to match an extended course of study undertaken by the principal alien. However, while the I-539 (B-2) application must be adjudicated on its own merits, a finding that the principal nonimmigrant lacks nonimmigrant intent is a negative factor in the exercise of discretion.

### **Implementation**

The *AFM* is revised as follows:

1. Chapter 30.2 is amended to read:

#### Chapter 30.2

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(c) Use of Form **I-539** for Extension of Stay. \*\*\*

(3) Adjudication. \*\*\*

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(C) Decide If a Favorable Exercise of Discretion Is Warranted.

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- whether the applicant is likely to attempt to stay indefinitely. USCIS may terminate a nonimmigrant's authorized period of stay when it becomes aware the alien intends to remain indefinitely in the U.S. [See *Matter of Safadi*, 11 I&N Dec 446 (BIA 1965)]. \*\*\*
- assuming other eligibility requirements are met, favorable consideration should be given to the cohabiting partner or other household member of a principal

nonimmigrant visa holder in the United States pursuant to another status (H-1B, F-1, etc.) when the cohabiting partner or other household member is applying for B-2 extension(s) for the duration of the principal nonimmigrant's stay. A "household member" of a principal nonimmigrant is an alien who regularly resides in the same dwelling as the principal nonimmigrant and with whom the principal nonimmigrant maintains the type of relationship and care as one normally would expect between nuclear family members.

☞ 2. Chapter 30.3 is amended to read:

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### Chapter 30.3

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(c) Use of Form [I-539](#) for Extension of Stay. \*\*\*

(3) Adjudication. \*\*\*

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(D) Determine if a Favorable Exercise of Discretion Is Warranted.

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Note 2:

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A series of precedent decisions and court cases uphold USCIS's decision to deny a change of status in such a situation. *Matter of Hsu*, 14 I&N Dec. 344 (R.C. 1973), denied a change of status to an applicant who obtained a visa under the pretext of a visit for business when the actual purpose was to seek acceptance at a school. In *Matter of Le Floch*, 13 I&N Dec. 251 (BIA 1969), the Board ruled that even the applicant's claim that she was misinformed by a consular officer regarding the need for a student visa was insufficient to justify entry as a visitor. In *Seihoon v. Levy*, 408 F. Supp. 1208 (D. La. 1976), the court upheld the decision to deny an application to change status based on a finding that a rapid sequence of events leading to enrollment in a school is sufficient for a finding that the applicant had a preconceived intent to change nonimmigrant status and circumvent the normal visa issuance process. \*\*\*

Assuming other eligibility requirements are met, favorable consideration should be given to the cohabiting partner or other household member of a principal nonimmigrant visa holder when the cohabiting partner or other household member is applying for change to B-2 status for the duration of the principal nonimmigrant's stay. A "household

member” of a principal nonimmigrant is an alien who regularly resides in the same dwelling as the principal nonimmigrant and with whom the principal nonimmigrant maintains the type of relationship and care as one normally would expect between nuclear family members.

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- ☞ 3. The *AFM* **Transmittal Memorandum** button is revised by adding, in numerical order, the following entry:

AD11-27 8/17/2011	<b>Chapter 30.2</b> <b>Chapter 30.3</b>	Ensures that USCIS uniformly and consistently processes Form I-539 for changes to and extensions of B-2 status for cohabiting nonimmigrant partners and other household members of principal nonimmigrants.
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#### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

#### Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to Service Center Operations.