

**DRAFT TEMPLATE FOR COMMENT ONLY**

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**REQUEST FOR EVIDENCE**  
**Form I-129, Petition for a Nonimmigrant Worker**  
**E-1 Treaty Trader**

You **(insert name of applicant)**, filed Form I-129, Petition for a Nonimmigrant Worker, with U.S. Citizenship and Immigration Services (USCIS), seeking E-1 nonimmigrant classification. You have indicated on Form I-129 that you are conducting trade through [insert name of trading company or sole proprietorship] and are applying to qualify yourself as a treaty trader. **We need additional information from you** in order to process your application and determine if you are eligible for E-1 nonimmigrant classification.

The E-1 classification may be granted to an individual who:

- Will be in the United States solely to carry on trade of a substantial nature that is international in scope;
- Will conduct trade principally (over 50% in volume) between the United States and the treaty country, of which the individual must be a national; and
- Intends to depart the United States upon the expiration or termination of E-1 status.

While a detailed and probative statement or statements made without supporting documents may sometimes be sufficient to establish a specific claim based on the facts presented, the statements made in the cover letter submitted with your application are insufficient and we need additional evidence. This request provides suggested additional evidence that you may submit to address each outstanding question we have based on what you have already submitted. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Please note that you are responsible for providing sufficient evidence which shows you meet all requirements, were eligible for the requested benefit at the time you filed the Form I-129, and continue to remain eligible at this time. Whether the evidence you submit is sufficient to meet your burden of proof depends on the quality and probative value of the evidence submitted.

If you do not respond to this request for evidence, we may deny your petition.

We check all petitions and applications filed for this classification in our Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations requesting to employ foreign workers. For more information about this program, please visit our website at [www.uscis.gov/VIBE](http://www.uscis.gov/VIBE).

**[DELETE IF NOT APPLICABLE]**

**Request for English Translations**

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**[NOTE TO ISO: Use this subsection only if you are requesting a specific English translation (with the required translator certifications) of a foreign language document submitted without one. DELETE this subsection if you are not requesting a specific English translation.]**

All foreign language documents must have a complete English translation to establish eligibility.

You submitted the following documents which contain a language other than English:

- [Officer must list the documents]

In order for USCIS to consider this evidence, you must submit the English language translation(s) for the document(s) noted above. In addition, the translator must certify that:

- The translations are accurate and complete; and
- He or she is competent to translate from the foreign language into English.

**Supplement to Form I-129**

You have submitted an incomplete supplement to Form I-129. Submit a fully completed E-1/ E-2 Classification Supplement to Form I-129.

**-OR-**

You have not submitted a supplement to Form I-129. Submit a fully completed E-1/ E-2 Classification Supplement to Form I-129.

**General Requirements for E-1 Treaty Traders**

To qualify for E-1 classification, you must show that you:

- Intend to depart when your E-1 status ends or is terminated;
- Are a national or citizen of a country with which a qualifying treaty exists with the United States or of a country accorded treaty visa privileges by legislation; and
- Will be in the United States only to conduct international trade that is:
  - Substantial; and
  - Principally between the United States and the treaty country.

**Treaty Country Nationality.** You must be a national or citizen of a country with which a qualifying Treaty of Friendship, Commerce, or Navigation (or its equivalent) exists with the United States, or a national or citizen of a country to which Congress has accorded treaty visa privileges to countries by specific legislation.

You must show that you are a national of a treaty country or a country accorded treaty visa privileges by

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legislation. Your country of nationality is determined by the passport you used when you were last admitted into the United States.

[NOTE TO ISO: If there has been a change of nationality since the applicant's last admission to the United States, please consult with counsel.]

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

- [Officer must list evidence submitted to meet this requirement]

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is not sufficient to meet the requirement.]

**-OR-**

You were last admitted into the United States using a passport issued by the government of [insert name of country]. This is not a country which [is covered by legislation permitting you to be classified as an E-1 nonimmigrant or shares a qualifying treaty with the United States].

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant.]

- Documents showing that your request is supported by a relevant treaty or legislation. For this evidence:
  - The treaty must be between the United States and the country that issued you the passport you used upon your last admission to the United States; and
  - The U.S. Department of State must recognize the treaty as sufficient to grant E-1 classification to nationals of that country.
  - If a treaty does not exist, there must be legislation according treaty visa privileges to the country that issued you the passport you used upon your last admission to the United States.
- A copy or printout of the Form I-94, Arrival-Departure Record, you received upon arrival in the United States; and
- Copies of your passport identification pages. This should include:
  - Your signature, photograph, and personal data;
  - Any relevant visa pages; and
  - Pages with relevant stamps showing admission into the United States.

**Trade.** You must be engaged in trade of a substantial nature that is international in scope. *Trade* is the

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existing international exchange of trade items for consideration between the United States and the treaty country. You do not meet this requirement if all you can demonstrate is that you are or will be engaged in domestic trade or the development of domestic markets without international exchange. The exchange of items must be traceable and identifiable. Title to the trade item must pass from one treaty party to the other. [One of the following, as applicable] The term “goods” means tangible commodities or merchandise having an extrinsic value. The term “services” means legitimate economic activities which provide other than tangible goods.

Substantial Trade. Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. A continuous flow of trade items between the United States and the treaty country contemplates numerous transactions over time. We will give greater weight to more numerous exchanges of larger value. A single transaction, no matter how protracted or monetarily valuable, is insufficient to show eligibility for treaty trader status. For smaller businesses, income from numerous transactions that is sufficient to support you and your family is a favorable factor.

Principal Trade. Over 50% of total volume of international trade that you conduct must be between the United States and the treaty country.

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

-[Officer must list evidence submitted to meet this requirement]

The evidence you submitted is insufficient. [Officer MUST insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to: [Delete any of the following that were already provided by the applicant]

- Your federal income tax returns;
- The enterprise’s federal income tax returns;
- Financial statements including balance sheet and statements of income and expenses;
- Shipper’s Export Declaration and Shipper’s Export Declaration for In-Transit Goods or evidence of electronic filing of export data through the Automated Export System;
- U.S. Customs and Border Protection forms, Entry Summary and Customs Bond that show business activity;
- Sales invoices;
- The enterprise’s bank statements;

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- Binding contracts with foreign suppliers or purchasers for products or services purchased or sold by the enterprise;
- An itemized list of your inventory in the United States;
- Bank certified cashed checks (front and back copies), receipts, bank statements, etc., showing costs of inventory purchases;
- Bills of lading, customs receipts, letter of credit, trade brochures, purchase orders, insurance papers, documenting commodities imported, carrier inventories, and/or sales contracts.

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**The Office of Foreign Assets Control (OFAC)** states that licensing is required for all U.S. dollar clearing transactions directly involving Iran. Note that dollar clearing transactions involving a third party and Iran may be permissible. A license is required, however, in instances where the monies have passed through a prohibited banking resource in Iran.

**OFFICER NOTE:** Only request an OFAC License if you have verified that the monies in question have passed through a prohibited institution. For a list of these institutions, please visit: [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc\\_ifsr.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf)

**Your Nonimmigrant Status**

You must be maintaining your current nonimmigrant status in order to qualify for an extension of status.

**-OR-**

You must be maintaining your current nonimmigrant status in order to qualify for a change of status.

**-AND-**

You did not submit any evidence for this requirement.

**-OR-**

To satisfy this requirement, you submitted:

-[Officer must list evidence submitted to meet this requirement]

The evidence you submitted is insufficient. [Officer MUST insert reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement]

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**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:  
[Delete any of the following that were already provided by the applicant or do not apply]

- **Current Copy of I-94 Arrival/ Departure Form:** The original I-94, a legible copy, or a printout of your current electronic Form I-94, Arrival-Departure Record (front and back).
- **ORIGINAL Form I-94:** Department of Homeland Security records do not indicate a record of your latest arrival into the United States. Submit the original Form I-94, Arrival-Departure Record, which was issued to you upon arrival into the United States.
- **Previous Copies of I-94 Arrival/ Departure Forms:** A legible copy of your original or electronic printout of Form I-94, Arrival-Departure Record issued to you upon arrival in the United States and any subsequent and prior I-94s issued (front and back).
- **Passport Pages:** Legible copies of your passport, including identification pages, visa pages, and any pages with entry and exit stamps. We prefer color copies because of the various color inks used for admission and departure control may not be as legible in black and white copies.

**OPTIONAL:** The case record indicates that your passport had expired and was no longer valid at the time you filed this application. Please explain. Provide evidence to establish that you had a valid unexpired passport at the time you filed the application or that a valid passport is not required.

- **Approval Notices:** Copies of all Form I-797A, Notice of Action, approval notices granting you any changes of status and/or extensions of stay in the United States in any nonimmigrant classification (including L-1, L-2, H-1, H-2, & H-3 classifications). If these are not available, list the periods of employment, the name of the employer(s), and the INS or USCIS file receipt number(s) assigned to the petition(s) or application(s).

**IF APPLICABLE:** You indicated your last current nonimmigrant status was \_\_\_\_\_. Please submit the last [state number]\_paystubs from your current employer.

- **F-1 Student Employment:** USCIS was unable to find a record for you in the Student and Exchange Visitor Information System (SEVIS). Submit copies of a properly executed SEVIS I-20 form. If you are authorized to engage in employment, also submit a legible copy of your Employment Authorization Document (Form I-766).
- **F-1 Student Status, D/ S + 60:** USCIS was unable to find a record for you in the Student and Exchange Visitor Information System (SEVIS). Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that you have maintained your F-1 student status at all times while in the United

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States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to you; (b) a letter from each school you have attended as an F-1 student that confirms that you maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of your school transcripts from each school attended. If you are authorized to engage in employment, also submit a copy of your current Employment Authorization Document (Form I-766).

- **F-2 Dependent:** You have listed your current nonimmigrant status as being an F-2 dependent of an F-1 student. Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that the F-1 student has maintained his or her F-1 student status at all times while in the United States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to the F-1 principal; (b) a letter from each school the F-1 principal has attended as an F-1 student that confirms that he or she maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of the F-1 principal's school transcripts from each school attended.
- **M-1 Student:** You have listed your current nonimmigrant status as being an M-1 vocational student. Before we may grant a change of nonimmigrant status, you must demonstrate that you were maintaining a valid nonimmigrant status at the time you filed the application requesting a change of status. To establish that you have maintained your M-1 status at all times while in the United States, please submit the following: (a) copies of all properly executed SEVIS I-20 forms that were previously issued to you; (b) a letter from each school you have attended as an M-1 vocational student that confirms that you maintained a full course of study at all times while attending each school (not including winter and summer breaks); and (c) sealed copies of your school transcripts from each school attended.

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STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS) Checks: COS from F-1, F-2, J-1, J-2, and M-1 Maintenance of Status Verification: If SEVIS shows "Terminated" or anything other than "Active," check the date that the last status change was made on the SEVIS Exchange Visitors Listing page. If the termination or deactivation date was prior to filing the I-129 and/ or prior to the expiration of the:

F-1 status (plus 60 days or 15 days if Designated School Official (DSO) authorized applicant to withdraw from class);

J-1 status (plus 30 days) indicated on the DS-2019;

M-1 status (plus 30 days - unless they fail to maintain status);

then the applicant was not maintaining an "Active Status" at the time of filing.

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NOTE: SEVIS terminations are usually automatic. However, there are some occasions when the “No Show,” “Invalid” or “Inactive” status will not show up for approximately 30 or more days. Before denying for failure to maintain status, check with the CSC, NAFSA representative to determine the exact date of termination.

- **J-1 Maintenance of Status:** You listed your current nonimmigrant status as being a J-1 exchange visitor.

You filed this application on [date] and submitted a photocopy of your Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) for an exchange visitor program at [program sponsor]. A review of the Student and Exchange Visitor Information System (SEVIS) that corresponds to this DS-2019 shows that your status was terminated on [date], [amount of time] before you filed this application. The evidence does not demonstrate that you were maintaining a valid, nonimmigrant status at the time this application was filed.

You must show that you were maintaining a valid nonimmigrant status at the time you filed this application. A letter from the Designated School Official (DSO) -or [program sponsor] is not enough. It is the DSO's or the program sponsor's responsibility to contact the Student and Exchange Visitor Program (SEVP) or the SEVIS help desk and have the electronic system corrected before the requested change of status may be granted.

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J-1,212(e) WAIVER PROCESS:

An applicant who is subject to 212(e) – and who has not fulfilled the two-year foreign residence requirement – must meet all the requirements for change of status, including approval of the Form I-612, Application for Waiver of the Foreign Residence, before you may approve the request for change of status. If the J-1 exchange applicant has not fulfilled the two-year foreign residence requirement and does not have a waiver of 212(e) prior to the filing of the Form I-129, they cannot change status. See 212(e) of the Act; 8 CFR 248.2.

For some 212(e) waivers, the Form I-612 is an electronic record only. It is created in CLAIMS based on a Department of State (DOS) letter recommending a waiver of the two-year residence requirement under section 212(e). The DOS waiver recommendation is based on a “No Objection Letter” (NOL) from the government of the applicant's country of nationality or last residence or Government Agency Recommendations (GAR).

On October 10, 2006, VSC began electronically receiving NOLs for the whole country. All DOS recommendation letters dated October 10, 2006, or later, for I-612 waivers of Section 212(e) are transmitted directly to the VSC from the DOS. These cases are NOT e-filed with the VSC.

If the petitioner employer did not provide a copy of the I-797 Notice of Action for the approved Form I-612, Application for Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration

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and Nationality Act, as amended, then request one from the applicant. **If USCIS does not have an electronic I-612 approval notice on file dated prior to the filing of the I-129/ I-539, then a copy should be requested from the applicant. If they do not submit an approval notice for an I-612 dated prior to the filing of the I-129/ I-539 – DENY.** See denial in [O:\\\_Adjudications\I-129\H1B\1-Denials\I-541 FOS-COS Status Templates\Beneficiary\Petition Approved J-1 COS to H-1B denied](#) and edit it to suit your Epetition.

Please be aware that delays in the I-612 workload may result in the case pending beyond normal processing times. If an approved I-612 waiver is the only issue in this case, search the systems for a pending I-612 waiver of the two-year foreign residence requirement and request to expedite the waiver application before issuing a notice of intent to deny or request for evidence.

For all other 212(e) waivers, such as hardship and persecution, a paper record is submitted on Form I-612 to CSC for adjudication. If CSC is going to recommend approval, CSC will forward the I-612 to the State Department for concurrence. After State Department review, they will return their recommendation to CSC. As with NOL and GAR cases, the applicant must have been granted the waiver prior to the filing of the application. **If they do not submit an approval notice for an I-612 dated prior to the filing of the I-129/ I-539 – DENY.** (Rev. 02-22-2008)

- **J-1 Waiver of INA Section 212(e) Two-Year Foreign Residence Requirement:** The Form I-129 requests a change of nonimmigrant status from J-1 to E-1. It appears that you may be subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act because:
  - You participated in a U.S.- or foreign government-financed J-1 exchange visitor program;
  - You became a J-1 exchange visitor as a national from a country designated as clearly requiring the services of persons with specialized knowledge or skill; or
  - You changed status to J-1 exchange visitor on or after January 10, 1977 to participate in graduate medical education or training.

If you have been granted a waiver of the above requirement, provide a copy of the Form I-797A, Notice of Action, for the approved Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended.

- **J-2 Dependent Spouse or Child Residency Requirement:** Your nonimmigrant status appears to be that of a J-2, dependent spouse or child of a J-1 exchange visitor. Further, it appears that your J-1 principal spouse or parent is subject to the two-year residence requirement of section 212(e) of the Immigration and Nationality Act. Therefore, you are also subject to the two-year residence requirement as the spouse or child of the J-1 principal.

Although you claim that your J-1 spouse or parent is no longer subject to the residence

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requirement, the case record does not support this claim. The record does not include a copy of a Form I-797A, Notice of Action, showing that a Form I-612, Application for Waiver of the Foreign Residence Requirement, has been approved for your J-1 spouse or parent. Please provide a copy of an approval notice showing that a waiver has been approved for your J-1 spouse or parent. Also, provide copies of all old Form IAP-66s and/or new Student and Exchange Visitor Information System (SEVIS) Form DS-2019s that have been issued to your J-1 spouse or parent to establish that s/he has been maintaining his or her status in the United States.

**General Reminders**

If you are submitting evidence in response to this request, please note the following:

- Unless an original document is requested above, clear and legible copies of the evidence are generally acceptable. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- You must submit a full English language translation of any evidence containing a foreign language. The translator must certify that the translations are accurate and complete and that he or she is competent to translate from the foreign language into English.

Also, you may provide an index of the evidence and corresponding tabs for each section of evidence to assist USCIS in reviewing your submission.