regulatory language reflects current practice albeit in a different presentation.

7. Current B Visa Standards: The proposed regulation is just that, it is proposed and has absolutely no legal effect on current administration of the INA. Consequently, the Department and Consular Officers shall repeat shall continue to apply the law as reflected in the FAM. Thus, the interpretation of B-1, in lieu of H-1 is valid law, the notes regarding certain religious activities continue to be valid interpretation, and the FAM guidance on athletes also is still in effect. Until a final rule is published the FAM and other current outstanding instructions remain valid.

8. Final Rule: The Department is extending the comment period for this proposal for another 60 days, as INS has not yet published their proposed rule. Posts may wish to submit any comments to CA/VO/L/R for consideration in this process. In view of the extension of the comment period and the interest in this proposal publication of a final rule is not anticipated for several months.

[Posted AILA InfoNet 10/29/93]

INS Advises on Questions Related to E Classification

File Ref: E-1; Advance Parole

The following is a October 1, 1993 memo (HQ 214e-C, HQ 245-c) from Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch for Adjudications (INS) to **Milton D. Andrews**. The letter discusses the INS position that dual intent is recognized in the case of E nonimmigrants. Following is the text of the letter:

Dear Mr. Andrews:

This responds to your July 8 letter which raises several questions related to E classification. Your first inquiry is whether the concept of dual intent is applicable to aliens in E visa status with an approved I-140 petition after alien labor certification has been obtained.

The agency has been considering whether the theory of dual intent should be applicable to aliens in E visa status for some time. In all probability, the new regulation codifying E visa policy will include a dual intent provision; as I am sure you are aware, the proposed regulation contains such a provision. At present, section 214(b) of the Immigration and Nationality Act (INA) specifies that all nonimmigrants, other than H's and L's, must demonstrate a nonimmigrant intent to depart the United States upon the termination of status. However, section 101(a)(15)(E) of the INA refers to neither a "residence in a foreign country" or entry into the United States "temporarily" as do some of the other sections describing nonimmigrant classifications.

Based on the absence in the statute of the phrase "having a residence in a foreign country which he has no intent of abandoning," which appears for many other nonimmigrant categories, a treaty alien's desire to seek permanent residence at some future date should not deprive him or her of remaining in nonimmigrant status. In practice, the concept of dual intent has been applicable to aliens granted E classification for a long time and has enabled them to receive extensions of stay indefinitely. Thus, in answer to your first question, the concept of dual intent is applicable to aliens in E classification in practice and is in the process of regulatory codification.

Secondly, you ask whether INS policy allows an alien in E status who inadvertently overstays an advance parole several weeks prior to an adjustment interview appointment date to pursue the adjustment application. In the example you provide, an E-1 visa holder awaiting adjustment overstays an authorized 60 day parole period "a few days after the 60 day period has expired and two weeks before [the] adjustment interview appointment date."

The overstay of an advance parole presents two issues: (1) What is the consequence of the overstay on the pending adjustment application? and (2) Can the alien reenter the United States?

With regard to the impact on the adjustment application, in the situation you describe, where an alien has traveled outside of the United States and violated the terms of an advance parole, a pending adjustment application is considered abandoned and would be terminated or denied on that basis; this would be true even assuming dual intent is applicable in this case. In that case, the applicant must file a new application with fee to again apply for adjustment of status.

With regard to the question of reentry, it would appear that the alien's pending adjustment application would make it difficult for the applicant to reenter with the nonimmigrant intent that is prerequisite to nonimmigrant status. However, given ample latitude for discretion, the alien could be: (a) granted E classification if the application for adjustment were withdrawn, (b) paroled in, or (c) processed for an exclusion hearing; in either scenario, the alien could file for adjustment of status.

Your suggestion that an INS border inspector might permit entry as an E-1 contingent upon the execution of a affidavit in which the alien abandons

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the pending adjustment application and any further efforts to seek adjustment does not reflect current policy and would not appear to be appropriate or warranted absent extenuating circumstances. Obviously, however, since I do not have the file in a specific case in front of me, I cannot be sure of the basis for requiring such an affidavit or prejudge the reasons it may have been appropriate in a given situation. In any event this office is responsible for policy matters and does not process individual, fact-specific cases.

Your suggestion that an alien who overstays an advance parole be allowed to simply file a new I-485 and fee and continue the adjustment processing on the same time schedule undercuts the policy reasons for having a clear expiration date on an advance parole and raises problems regarding the reasonableness of the time period following expiration. We appreciate your concern for a reasonable policy and note that the wide variability in matters of the sort you describe make it important for inspectors to have latitude in this sort of situation.

I hope this information is useful.

Jacquelyn A. Bednarz

(Courtesy of **Milton D. Andrews**)
[Posted AILA InfoNet 10/27/93]

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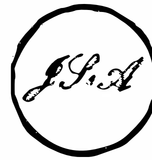

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