

September 19, 2005

OFO:IPP:BZ

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE

FROM: Acting Executive Director
Immigration Policy and Planning

SUBJECT: New Nonimmigrant Visa Classification: E-3

The purpose of this memo is to advise U.S. Customs and Border Protection Officers of the new E-3 nonimmigrant classification created pursuant to the Australian Free Trade Agreement. The Final Rule was published in the Federal Register on September 2, 2005, and became effective on that date. The E-3 classification applies to nationals of Australia who are coming to the United States solely to perform services in a specialty occupation. The E-3 classification also applies to the principals' spouses and children.

The term "specialty occupation" is defined in the Immigration and Nationality Act (INA) section 214(i)(1). Generally, a specialty occupation is one that cannot be performed without a bachelor's degree or higher (or its equivalent) in a specific field of study or a narrow range of fields of study. The requirements for E-3s with respect to the education of the beneficiary and the job duties to be performed mirror the H-1B requirements, and are found in Title 8 Code of Federal Regulations (CFR) section 214.2(h). General documentary requirements for H-1Bs, and therefore E-3s, can be found in 8 CFR section 214.2(h)(4)(iv).

No petition is required to be filed for an E-3. The application is made directly at the consulate, similar to other nonimmigrant classifications, such as the B-1/B-2 or F-1 classification. However, a Labor Condition Application that reflects the job offer at the appropriate prevailing wage rate is required as part of the E-3 application.

The term of admission for E-3s is the same as E-1s and E-2s, in that the initial period of admission is two years. E-3s will receive two-year extensions indefinitely so long as they otherwise continue to qualify for the E-3 classification.

Spouses of E-3 principals are not required to be Australian nationals, and, pursuant to INA section 214(e)(6), are eligible to apply for work authorization in the United States. Such spousal employment may be in a position other than a specialty occupation. This is an advantage over the H-1B: A dependent H-4 spouse cannot obtain permission to work while in H-4 status.

Should you have any questions or require additional information, please contact Beverly Zaslow, Program Officer, Immigration Policy and Programs, Office of Field Operations, at (202) 344-1438.

/s/

Michael. J. Hrinyak