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Human Resources: E-3 Australian Specialty Occupation Workers

The E-3 visa is for Australian nationals to work in specialty occupations in the U.S. A maximum of 10,500 Australian nationals are allowed to come to the U.S. each fiscal year to perform services in a specialty occupation. Spouses and dependents do not count against the annual cap, nor do E-3 visa holders extending their status working for the same employer.

Spouses of the E-3 visa holder can apply for an Employment Authorization Document to work in the U.S.

Pursuant to section 214(i) (1) of the Immigration and Nationality Act, in the same context as the H-1B visa," specialty occupation means an occupation that requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation."

Australian permanent residents are ineligible for an E-3 visa unless they possess an Australian passport by the time of their visa interview.

An E-3 specialty worker may initially be admitted for the validity period on the E-3 Labor Condition Application, up to a maximum of two years. Extensions are also granted in increments up to two-years. There is no total length of stay and no specified number of extensions that a qualified E-3 specialty worker can be granted. However, under current regulations, E-3 nonimmigrants must maintain the intent to depart the U.S. upon the expiration of their status.

E-3 Visa Application Procedures

Under the same general guidelines as the H-1B visa, employers must file a Labor Condition Application (LCA) with the Department of Labor. (Employer must pay prevailing or actual wage, whichever is higher).

To apply for E-3 status abroad, the Form I-129 isn't necessary; the Australian employee must present the following to the U.S. consular officer at the time of the visa application:

- A copy of the certified LCA (provided by employer)
- Documentation showing eligibility for employment in a specialty occupation
- Job offer letter from U.S. employer
- Documentation that the position qualifies as a specialty occupation.
- Proof of Australian citizenship
- Proof of academic credentials and any required licensure
- Proof of payment of the Machine Readable Visa fee

See http://canberra.usembassy.gov/consular/visas/niv/e3.html for more details.

Change of Status to E-3 within the U.S.

An alien present in the U.S. in another nonimmigrant status, if otherwise eligible, may apply to the USCIS Vermont Service Center for a change of status to E-3.

Submit:

- Form I-129 and Form I-129 filing fee
- Copy of the E-3 certified LCA
- Proof of Australian citizenship
- Letter from U.S. employer describing the specialty occupation, minimum requirements for the position and how the individual meets those requirements, arrangements for remuneration, and anticipated length of stay.
- Proof of academic credentials and any required licensure
- Proof of payment of the Machine Readable Visa fee

E-3 Extension

Extensions of E-3 status are granted in increments of up to two-years. There currently is no specified limit on the number of extensions a qualified E-3 specialty worker can be granted.

To apply for an extension of E-3 status submit the following to the Vermont Service Center:

- Form I-129 and Form I-129 filing fee
- Proof of Australian citizenship
- Letter from U.S. employer describing the specialty occupation, minimum requirements for the position and how the individual meets those requirements, arrangements for remuneration, and anticipated length of stay.
- Proof of academic credentials and any required licensure

E-3 Dependents

Dependent spouse and children (under 21 years of age), are admitted in E-3 status regardless of their nationality.

The dependent spouse of an E-3 nonimmigrant is eligible for employment authorization after arriving in the U.S. through the service center with jurisdiction over their place of employment.

In order to obtain an EAD the spouse must file:

- Form I-765 and Form I-765 filing fee
- Provide evidence of spousal relationship to principal E-3 (marriage certificate)
- Copy of I-94 Arrival-Departure Record (front and back)
- Copy of Federal-issued identity document (i.e. passport, birth certificate, visa)
- Two 2” x 2” passport style photos

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