# APPENDIX A- Copy of AILA's proposal previously submitted to DOS and CBP

**Blanket L Issues Requiring Inter-Agency Resolution**

**Summary of Issues:**

Effective February 14, 2012, the U.S. Department of State (DOS) issued a final rule amending its regulations to allow issuance of L nonimmigrant visas for a period of time equal to the reciprocity schedule in effect for the country of visa applicants' citizenship. Accordingly, blanket L visas now may be issued with a validity period of up to the reciprocity limits. 22 CFR §41.112(*b*)(1). This is usually a period of 5 years. (Some L visas will be issued for a shorter period of one or two years due to reciprocity limitations.)

An individual applicant for a blanket L visa must present a Form I-129S prepared by the prospective U.S. employer demonstrating eligibility for L classification. 8 CFR §214.2(*l*)(5)(ii)(E). Form I-129S describes the job opportunity and indicates the intended period of employment. Although a blanket L visa may be issued with a validity period of 5 years, consular officers continue to endorse Forms I-129S for a period of 3 years.

The discrepancy between the 5 year validity of blanket L visas and 3 year validity of the endorsed Form I-129S creates a procedural conundrum for blanket L workers and their employers. Currently, there is no clear procedure available to continue using a blanket L visa during the two year period it remains valid following expiration of the endorsed Form I-129S. Establishment of a clear, easily implemented procedure is essential. A proposal appears below.

A second, distinct challenge derives from the discrepancy in the various expiration dates that appear on a blanket L visa, on endorsed Forms I-129S, on the Form I-94 admission record issued by U.S. Customs and Border Protection (CBP) officers, and the requested period of employment indicated by employers on Form I-129S. Employers have no clear guidance about which of these dates is the correct one to indicate as the authorized period of employment for purposes of completing Form I-9, Employment Eligibility Verification. Arguably, the correct date is the one indicated on the Form I-94 admission record issued by CBP as this is the period of authorized stay. This problem is particularly acute, however, as blanket L workers approach the end of the statutory 5 or 7 year limit on their eligibility for L-1 employment authorization as, in practice, they frequently are incorrectly admitted by CBP for periods of time in excess of the statutory limit.

**Agencies Involved:**
DOS, CBP, USCIS, ICE

**Parties Impacted:**
Employers utilizing blanket L petitions and individual blanket L workers

**Summary of Impact:**
See the discussion within

**Proposed Solution:**

Department of Homeland Security (DHS) regulations grant authority to DOS, CBP and CIS to endorse Forms I-129S and to CBP to admit nonimmigrant workers presenting endorsed Forms I-129S according to the following guidelines:

Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records. 8 CFR 214.2(*l*)(5)(ii)(E).

*Clarifying the period of time for which Forms I-129S can be endorsed*

DOS consular officers, upon issuing a blanket L visa, are required to *endorse* Forms I-129S. 8 CFR §214.2(*l*)(5)(ii)(E). The regulation gives CBP authority to *admit* blanket L workers presenting an endorsed Form I-129S for a period of up to 3 years. The regulation is silent, however, about the period of time for which Forms I-129S may be endorsed by consular officers. There appears to be no limitation in DHS regulations that would preclude consular officers from endorsing a Form I-129S for a period of up to five years, congruent with the period of validity of a blanket L visa.

The same regulation, 8 CFR §214.2(*l*)(5)(ii)(E), imposes a 3 year limit on the period of time that a DHS Service officer may endorse a Form I-129S. A Service officer, however, would be endorsing a Form I-129S only in the context of a change or extension of status application for a nonimmigrant alien present in the U.S. or, for citizens of Canada, concurrently with admitting the worker to the U.S. This limitation, therefore, is consistent with the period of time for which a blanket L worker can be granted L status upon being admitted or when extending or changing status in the U.S.

In contrast, the regulation does not impose any such limit on the period of time for which consular officers can endorse a Form I-129S. Accordingly, it is reasonable to conclude that the drafters of the regulation understood how to impose a limitation on the period of validity for which Forms I-129S could be endorsed. The drafters chose not to impose limitations on the period of time for which consular officers can endorse them.

Current DOS policy, rather than regulations, limits the period of time for which a Form I-129S should be endorsed to 3 years. 9 FAM 41.54 N13.6. Endorsement of Forms I-129S for a period

up to 5 years would not require a change to existing regulations. DOS could issue new policy instructions to consular officers in the Foreign Affairs Manual (FAM) to effectuate the change.

Endorsing Forms I-129S for a period of 5 years would be consistent with practices used for other nonimmigrant worker visas. Currently, traders or investors who are citizens of countries with qualifying treaties or other agreements may be eligible to receive E-1 or E-2 visas valid for up to 5 years. Upon admission to the U.S., however, a nonimmigrant worker with an E-1 or E-2 visa may be admitted for a period of two years. Endorsing Forms I-129S with a 5 year period of validity while continuing to limit admission of blanket L workers for a period of 3 years would allow for the same efficiencies provided by the E visa category while maintaining a similar level of control over the employment of the nonimmigrant worker in the U.S.

Changing DOS policy in the FAM to allow endorsement of Forms I-129S for a period of 5 years is a solution superior to any alternatives. Two examples illustrate this point. First, CBP has regulatory authority to adjudicate Forms I-129S for citizens of Canada when presented concurrently with an application for admission to the U.S. 8 CFR §214.2(*l*)(17)(ii). There is no clear regulatory authority, however, for CBP to adjudicate Forms I-129S for citizens of any other country in any other context. In addition, there are practical challenges associated with assigning CBP authority to adjudicate Forms I-129S at international airports other than Pre-Clearance Stations in Canada. For example, it is unclear how CBP would address blanket L applications that are found to be documentarily insufficient to support admission. [If a blanket L petition is found to be documentarily insufficient at a border port of entry or pre-clearance station, returning to a home in Canada to collect required documents should not be as burdensome as returning to, for example, Perth, Australia.]

Second, upon expiration of a Form I-129S, it is possible for an individual to apply for a new blanket L visa even though the person may still be in possession of an unexpired L visa. Applying for a new blanket L visa while still in possession of one that is unexpired would be consistent with current practice for other nonimmigrant worker visa categories. Current DOS and CBP policies recognize that an initial H-1B visa remains valid for persons who have changed employers after receiving an initial H-1B visa and may be used to continue to apply for admission to the U.S. if presented with a copy of the Form I-797, Notice of Action pertaining to the H-1B petition filed by the new employer. Individual H-1B workers, however, may prefer to obtain a new H-1B visa that is endorsed with the name of the new employer rather than using the unexpired visa endorsed with the name of the original employer. Similarly, blanket L workers could apply for a new visa prior to expiration of the existing visa in order to obtain a newly endorsed Form I-129S from DOS. *See*, 9 FAM 41.54 N20.1-1.

Doing so, however, would frustrate the efficiencies and cost savings associated with issuing a blanket L visa valid for 5 years. Endorsing Forms I-129S for a period of up to 5 years, congruent with the L visa expiration date would eliminate this drain on DOS resources and be far more cost effective and efficient for employers and blanket L workers.

*Employment Eligibility Verification challenges created by current policies*

Consular officers routinely endorse Forms I-129S for a period of 3 years without reference to the period of employment requested by the employer on the form. Indeed, they are instructed to endorse the form for a 3 year period from the date of endorsement rather than the dates of employment requested by the employer. 9 FAM 41.54 N13.6. CBP officers routinely admit blanket L workers for 3 years from the date of admission, again without reference to the period of employment authorization requested by employers on Form I-129S, and also without reference to the 3 year period for which the Form I-129S was endorsed by the consular officer.

Although CBP policy requires officers to verify previous periods of stay in L-1 status and limit the stay of blanket L workers to the statutory limit, it is not clear that this practice is followed in most cases. Often, blanket L workers are actually admitted for a uniform 3 year period, part of which may exceed the statutory 5 or 7 year limit.

Employers completing Form I-9, Employment Eligibility Verification normally should indicate that a nonimmigrant L worker is authorized for employment through the expiration date of Form I-94, record of admission created by CBP. If a blanket L worker is incorrectly admitted for a 3 year period that exceeds the maximum period allowed by statute, there is no clear guidance addressing the date to which the worker is actually authorized to engage in employment. Should the correct period of employment authorization be 5 or 7 calendar years from the original date of admission (depending on whether the worker is classified L-1B or L-1A)? Is the correct period of employment authorization 5 or 7 calendar years plus the number of days that the individual was absent from the U.S. during that period? Currently, there are no answers to these questions.

Both blanket L employers and workers employed in blanket L status are exposed to certain risks as a result of these unanswered questions. When completing Form I-9, Employment Eligibility Verification, employers may inadvertently rely on the period of admission and apparent employment authorization granted to blanket L workers by CBP in excess of the statutory limit. Such employers may find they are accused by Immigration and Customs Enforcement of knowingly employing an alien who is statutorily ineligible for such employment. In addition, Blanket L workers may inadvertently rely on a period of admission beyond the statutory limit. By relying on a Form I-94, admission record incorrectly issued with an expiration date past the period of L status permitted by statute, such workers may be present in violation of their nonimmigrant status and risk being placed in removal proceedings.

Harmonizing DOS and CBP practices relating to blanket L visa and Form I-129S validity dates and the period of admission for blanket L workers should eliminate these problems. This can be achieved by simplifying and clarifying the date to which a blanket L worker may be admitted to the U.S. Specifically, consular officers should endorse Forms I-129S for the period of employment requested by the employer up to 5 years. CBP officers should admit blanket L workers for a period of 3 years or to the expiration date of the endorsed Form I-129S. This practice would provide a simple rule for CBP officers to follow. Both employers and blanket L workers could then safely rely on the period of admission and employment authorization conferred by the Form I-94 record of admission issued by CBP. Both would be less likely to inadvertently violate employment eligibility compliance and maintenance of status laws and regulations.

An employer wishing to continue the temporary employment of a blanket L worker past the expiration of an endorsed Form I-129S, would be required to send the worker to obtain a new blanket L visa at a consulate. An application for a second blanket L visa filed by a worker should include a Form I-129S requesting a period of employment up to the statutory limit of 5 or 7 years in L-1 status plus the number of any days that the individual was absent from the U.S. Consular officers would be required to verify the correct, remaining period of eligibility for L-1 classification, presumably an exercise that they already perform, and endorse Form I-129S for the period of employment requested by the employer, up to the statutory limit of eligibility.

*Summary of recommendations*

AILA strongly encourages DOS and CBP to adopt complementary policies allowing endorsement of Forms I-129S by consular officers for 5 years and to admit blanket L workers for up to 3 years or to the expiration date of the endorsed Form I-129S, as follows:

**DOS:**

- Allow employers to indicate an intended period of employment up to 5 years on Forms I-129S.

- Endorse Forms I-129S for the period of employment indicated by the employer, up to five years (or up to the statutory limit of L-1 eligibility for second visa applications).

- Issue blanket L visas with validity expiration dates equal to the endorsement expiration dates on Form I-129S, up to 5 years, subject to visa reciprocity limitations.

**CBP:**

- Admit nonimmigrant workers with blanket L visas for up to three years, or, if it will expire sooner than 3 years from the date of application for admission, admit to the expiration date of the endorsed Form I-129S. *See,* 8 CFR 214.2(*l*)(13)(ii). To illustrate: a. If the endorsed Form I-129S expires *more* than three years after the date of admission, admit for three years.

- If the endorsed Form I-129S expires *less* than three years after the date of admission, admit to the I-129S expiration date (which also would be the date of intended employment on the endorsed form).

- Admit blanket L workers with an expired L visa applying for admission under the automatic visa revalidation provisions of 22 CFR §41.112(*d*) through the unexpired period of initial admission or extension of stay indicated on the worker's Form I-94.

**How Proposed Solution Is a Benefit to Agency(ies) and Applicants:**

**DOS**: The efficient use of resources introduced by issuance of L visas up to 5 years will be realized through endorsement of Forms I-129S for an equal period of time or for the period of employment requested on Form I-129S, up to 5 years. Under the current system, employers in need of an endorsed Form I-129S after 3 years in order to obtain permission for their blanket L workers to continue enjoying the economic and procedural efficiencies of the blanket L petition are likely to send the workers back to U.S. consulates for a new visa even though the original one remains unexpired. Endorsing Forms I-129S for up to 5 years will eliminate this demand on DOS resources.

**CBP**: Under current procedures, CBP officers have to determine how much time blanket L workers have been present in the U.S. in order to ensure that they are not admitted beyond the statutory limit. Frequently, CBP officers fail to perform this calculation and admit blanket L workers for a period longer than permitted by law. Admitting blanket L workers for a uniform period of 3 years or to the expiration date of the endorsed Form I-129S, will maximize the likelihood that blanket L workers will not be admitted past the period authorized by statute. While the procedure would not eliminate the need for CBP officers to calculate previous periods of admission in L-1 status in order to verify eligibility of such workers for admission, it should make that process more efficient, thereby reducing errors and demands on resources to correct them.

**Employers**: Employers would have a clear, simple and easy to follow set of rules for obtaining and maintaining the lawful status of blanket L workers. They also would be less likely to inadvertently continue employing a blanket L worker past the period of time for which the individual is statutorily eligible to accept such employment in reliance on an incorrect, uniform 3 year period of admission, avoiding the risk of being accused by ICE of knowingly employing an unauthorized alien.

**Blanket L workers**: Blanket L workers would have a clear, simple and easy to follow set of rules for obtaining and maintaining lawful status in blanket L classification. They would be less likely to receive an incorrect period of admission from CBP and, in reliance on it, remain present in the U.S. past the period of time permitted by statute, thereby avoiding the risk of being found to be present in violation of their L status and being placed in removal proceedings.