Nonimmigrant E–3 treaty aliens in specialty occupations —(1) *Classification.* An alien is classifiable as a nonimmigrant treaty alien in a specialty occupation if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(iii) and that the alien:

(i) Possesses the nationality of the country statutorily designated for treaty aliens in specialty occupation status;

(ii) Satisfies the requirements of INA 214(i)(1) and the corresponding regulations defining specialty occupation promulgated by the Department of Homeland Security;

(iii) Presents to a consular officer a copy of the Labor Condition Application signed by the employer and approved by the Department of Labor, and meeting the attestation requirements of INA Section 212(t)(1);

(iv) Presents to a consular officer evidence of the alien's academic or other qualifying credentials as required under INA 214(i)(1), and a job offer letter or other documentation from the employer establishing that upon entry into the United States the applicant will be engaged in qualifying work in a specialty occupation, as defined in paragraph (c)(1)(ii) of this section, and that the alien will be paid the actual or prevailing wage referred to in INA 212(t)(1);

(v) Has a visa number allocated under INA 214(g)(11)(B); and,

(vi) Intends to depart upon the termination of E–3 status.

(2) *Spouse and children of treaty alien in a specialty occupation.* The spouse and children of a treaty alien in a specialty occupation accompanying or following to join the principal alien are, if otherwise admissible, entitled to the same classification as the principal alien. A spouse or child of a principal E–3 treaty alien need not have the same nationality as the principal in order to be classifiable under the provisions of INA 101(a)(15)(E). Spouses and children of E–3 principals are not subject to the numerical limitations of INA 214(g)(11)(B).

[70 FR 52293, Sept. 2, 2005]