

IMMIGRATION



Frequently Asked Nonimmigrant Questions

By Elaine Martin, Attorney, www.martinvisalaw.com

1. "Visa" vs "status" explained.

It is very common for people to use the term "visa" when referring to a foreign national's immigration status in the US. For example, people will ask "what visa do I need to study here?" or "when does your visa expire?" when they really want to know when the authorized stay expires. So what exactly is a "visa" and why is using that word confusing?

Unless you are Canadian, you will need a visa stamp on your passport to enter the US. The visa is the stamp on your passport that you get at a U.S consulate outside the US. You cannot get a visa in the US. The visa is a travel document and is only needed to enter the US. Once you are in the US, you can stay past the expiration of your visa as explained below.

"Status" means that category in which you entered the US (e.g. H-1B, L-2, B-1) and the length of time you can stay here. This may not always be the same as the visa, for example if you entered in F-1 status, using an F-1 visa, and then changed to H-1B status.

2. How long can I stay in the U.S?

You can stay in the US as long as your status allows. Normally, this length of time is dictated by your I-94. The I-94 is the small white (or green if you used the Visa Waiver Program to enter) card that a US immigration officer put in your passport when you entered the US. If you had a change or extension of status approved after you first entered the US, the approval notice will have a new I-94 attached to the bottom. This new I-94 should show how long you can stay here. However, any travel close to the approval, or after the approval, might affect how long you can stay in the US, so please ask your attorney for specific advice.

3. Do I need a new visa after my status has been extended?

In general, you only need a new visa stamp in your passport to return to the US after the current visa has expired. If you are not traveling, you can stay in the US after the expiration of your visa provided that your status has been extended. If you travel before your visa has expired, and you have an extension approval, you should show both the old, unexpired, visa and the extension approval, to the immigration officer and you should get the extension end date on your new I-94.

4. Do I need a new visa after my status has been changed?

If you are not traveling, you can stay in the US after a change of status without needing a new visa. After the change of status has been approved, however, you will need to get a new visa (showing the new status) before you can return to the US from overseas in the new status.

5. Where can I get a visa?

You can get a visa at a consulate in your home country or in another country to which you have close ties. Many foreign nationals also apply for visas at consulates in Canada or Mexico. This option is normally available to applicants to have no prior immigration violations, and no criminal, medical, or other unusual issues.

Please check the website of the consulate where you want to apply, for specific procedures, document requirements, and waiting times. The consulate websites are listed here: <http://www.usembassy.gov/>. Waiting time at the consulates are available here: http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php. In addition to the wait times listed on this website, you should be prepared for potential delays due to security clearances. In the worst cases, we have seen security clearance take months, particularly for people from predominantly Muslim countries, unfortunately.

6. Can my spouse or children work when they accompany me to the US?

Your spouse will be eligible for work authorization if s/he is in one of these categories: L-2, E-1, E-2, E-3, J-2, K-2, K-4 status. Spouses in most other dependent status are not eligible to work in that status. They may be eligible for another status, independent of yours, that would allow them to work. Children in dependent status, except those in J or K status and those at the final stage of the green card process, cannot get work authorization.

Your spouse and dependents, if eligible, can get work authorization by filing a Form I-765 with the USCIS. This can be done once s/he has entered the US in the nonimmigrant status, and takes about 3-4 months for approval. Until the I-765 is approved, your dependent cannot work.

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