

Who May Apply to Change to a New Nonimmigrant Status?

If you are a Nonimmigrant you may qualify for a change of nonimmigrant status if you are:

- * lawfully maintaining your present nonimmigrant status in a category that is not ineligible for a change in status;
- * eligible according to immigration regulations for the nonimmigrant status you are requesting; and
- * have not violated any law that would keep you from being granted this benefit.

In general, you may apply to change your nonimmigrant status if you were lawfully admitted into the United States with a nonimmigrant visa, your nonimmigrant status remains valid, and you have not committed any crimes that would make you ineligible.

· You may *not* apply to change your nonimmigrant status if you were admitted to the United States in the following visa categories:

(VWPP) - Visa Waiver Pilot Program (or the Guam Visa Waiver Program)

D - As a crewman

C - As an alien in transit or in transit without a visa

K - As a fiancé of a U.S. citizen or dependent of a fiancé

S - As an informant (and accompanying family) on terrorism or organized crime

· If you are an **international exchange visitor** (J visa category) you may *not* change your nonimmigrant status if you were admitted to the United States to receive graduate medical training, unless you receive a special waiver. In addition, *some* exchange visitors must meet a **foreign residence requirement** before they are allowed to change status. This means that some international exchange visitors must leave the United States and go back to their home country for a minimum of two years before applying to come to the United States as a temporary worker or an immigrant. If you are an exchange visitor and are required to meet the foreign residence requirement, you must receive a waiver if you wish to change your nonimmigrant status without returning home. If you do not receive a waiver, then you may only apply to change to the A (Diplomatic and other government officials, and their families and employees) or G (Representatives to international organizations and their families and employees) nonimmigrant categories.

The applicable laws can be found at [8 CFR 214.2](#) and [212.7](#).

· If you are a **vocational student** (M visa category), you may *not* apply to become an academic student (F visa category). You also may *not* apply to change from the vocational student visa category to a temporary worker visa category (H) if it was the training you received as a vocational student in the United States that made you qualified for the temporary worker position.

· You *do not need to apply* to change your nonimmigrant status if you were admitted into the United States for business reasons (**B-1 visa category**), and you wish to remain in the United States for pleasure before your authorized stay expires.

· If you are in the United States as the spouse or child of someone in the following nonimmigrant visa categories, *you do not need to apply* to change your status if you wish to attend school in the United States (as long as your parent or spouse maintains their original nonimmigrant status).

A - Diplomatic and other government officials, and their families and employees.

E - International Trade and Investors

F - Academic Students and their families

G - Representatives to international organizations and their families and employees.

H - Temporary Workers

I - Representatives of foreign media and their families

J - Exchange Visitors and their families

L - Intracompany Transferees

M - Vocational Students and their families

A change of status is obtained if the beneficiary is in the U.S., while a visa has to be obtained from outside the U.S. For example, an individual in F-1 (student) status can change status to H-1B upon approval of the H-1B petition filed by his or her employer. The individual may commence employment immediately (as per the terms of the approval notice) without having to leave the U.S. and being issued an H-1B visa at a U.S. Consulate abroad. If the H-1B beneficiary needs to travel abroad at some point, it is necessary to obtain an H-1B stamp (visa) in the passport from a consulate abroad in order to re-enter the U.S. in H-1B status.

Conversely, an individual outside the U.S. can have an H-1B petition filed on his or her behalf by the employer and take the INS's approval notice to the nearest U.S. Consulate to be issued an H-1B visa.

The only way a visa can be extended in the U.S. itself is if a person already has an H-1B stamp (visa) in the passport which the person can send to the Visa Office in Washington, DC for revalidation/reissuance. In all other cases, if the person has no visa stamp in the passport or has a visa stamp of a different type, such as B-1 (visitor) or F-1, the person has to obtain the H-1B visa from outside the U.S. at a U.S. Consulate.

When an alien submits an application to extend their nonimmigrant status or change to another nonimmigrant status they do not accrue unlawful presence and will be considered to be in a period of authorized stay so long as these conditions are met:

- The alien was lawfully admitted to the US
- The application was not frivolous and was timely filed
- The alien did not engage in unauthorized employment

This rule protects aliens who stay beyond the date marked on their I-94. So long as the nonimmigrant application is filed before that date, they will not

accrue unlawful presence if the application is approved, or if they leave the US before it is denied. If an alien has timely filed a nonfrivolous application for E/S or C/S, the first 120 days of unlawful presence are not counted towards the 3-year bar under section 212(a)(9)(B)(i) of the Act. Section 212(a)(9)(B)(iv) of the Act further states that the alien must have been lawfully admitted or paroled into the United States, and must not have been employed without authorization before the E/S or C/S application was filed or while it was pending.

<http://www.ins.usdoj.gov/graphics/howdoi/NIeligibility.htm>

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