

## CHANGE OF STATUS (COS) IN THE US

- **You must be able to maintain legal current nonimmigrant status for at least 30 days prior to the start of classes in order to be eligible to change status. For example, if classes begin September 1, 20XX, your B-2 status must be valid until at least August 1, 20XX, one month before classes start.**
- **Before you can submit a COS application to USCIS you must first [receive a Form I-20](#) from OIS and then pay the SEVIS fee online at [fmjfee.com](http://fmjfee.com). You will receive an e-mail when the I-20 is ready. When you receive the e-mail, call 215.204.7708 to schedule an appointment. You will need to reschedule if you arrive more than 15 minutes late**
- **If your I-94 card has expired, OIS cannot assist you with a COS. You should seek the services of an immigration attorney (<http://www.temple.edu/ois/pdfs/attorney.pdf>).**
- **If you hold a Visa Waiver (WT), you may not extend or change your status in the US.**
- **A nonimmigrant who travels abroad while an application for change of status is pending is considered to have abandoned the change of status application. The Department of Homeland Security will deny the application if they become aware of the departure.**
- **Individuals in F-2 and B-2 may not begin studying or working on campus until the COS is approved by USCIS; individuals in H-4 status may begin studying but may not work (including assistantships) until the COS is approved.**

There are two ways to obtain F-1 student status. Both options require that you obtain a Certificate of Eligibility from the OIS.

You could submit an application for a change of status to the United States Citizenship and Immigration Service (USCIS) and wait for their decision. OR you could depart the US, apply for a new entry visa, and re-enter the U.S. in student status. The advantages and disadvantages of both options are described later in this handout.

When you first obtained an entry visa and entered the U.S. you indicated that you were coming to the U.S. to do a specific thing. It was either joining your spouse, visiting the US, etc. Sometimes, however, people come for one reason and then change their minds. The law provides for such situations by allowing someone to apply for a change of status from one nonimmigrant classification to another.

## **Eligibility for change of status**

After your application for a change of status is received by The United States Citizenship and Immigration Service (USCIS) they will make two determinations in the course of reviewing an application for a change of status:

1. Are you eligible for the nonimmigrant status being requested? and
2. Are you eligible to have your status changed in the United States?

## **Are you eligible for the nonimmigrant status being requested?**

Each nonimmigrant category has specific eligibility requirements and conditions. Some categories also have restrictions on the cumulative amount of time a person can be in a particular status before obtaining it again. The burden is on the applicant to establish eligibility for the particular nonimmigrant status being requested.

## **Are you eligible to have your status changed in the United States?**

USCIS officers must also determine an alien's eligibility for a change of status, which is a standard separate from whether or not a person qualifies for a status itself. You could be generally eligible for a particular nonimmigrant classification, but if you are not eligible for a change of status, you cannot change to that classification in the United States.

Individuals who are not eligible for a change to F-1 Student status in the US include:

- Individuals in J status who are subject to the two year home residence requirement
- Individuals in M, C, D or K status
- Individuals who are not currently maintaining their non-immigrant status, i.e. if your status has expired in the US

If you are ineligible to have your status changed in the U.S., it does not necessarily mean that you cannot obtain a particular nonimmigrant status; it just means that you cannot obtain the status by submitting an application in the U.S. If you are ineligible to change status in the United States, you should still inquire about eligibility to obtain the status by exiting the United States, applying for the appropriate nonimmigrant visa at a U.S. consulate, and then re-entering the United States to be admitted in the desired status.

The latest guidance from USCIS holds that for a foreign national to be eligible for a change of status to F-1 classification, his/her current status must be valid through at least thirty days prior to the start-date on the SEVIS Form I-20. A foreign national who requests a change of status to F-1 classification but whose current status will expire more than thirty-days prior to the program start-date on the SEVIS Form I-20 will have his/her change of status request denied. The reasoning is that since a student cannot enter the United States with a valid F-1 visa more than thirty days before the program's start date, a foreign national that is already in the United States cannot similarly change status to F-1 classification unless his/her current status is valid at least until thirty days before the program start date.

Some examples are as follows:

1. A B-2 visitor's current status is valid until April 1, 2006. The foreign national has a valid SEVIS Form I-20 showing a program start date of May 1, 2006. The earliest date that the F-1 status can go into effect is April 1, 2006 (thirty days prior to the program start date). Because the validity of the B-2 status remains in effect until April 1st, the application would be approvable because the applicant can remain in valid status until the F-1 status can become effective.
2. The same B-2 visitor's current status is only valid until March 15, 2006. The application would not be approvable because the foreign national would not be able to maintain valid status until April 1, 2006. The determining factor for the thirty-days is not the date of adjudication but instead is the date when classes begin.

## **Factors determining eligibility for change of nonimmigrant status**

### **Statutory eligibility**

The Immigration and Nationality Act prohibits change to or from certain nonimmigrant categories. Some aliens are in a classifications that does not allow for a change of status in the United States (for example, J1s subject to the two year home rule are ineligible to change status in the US).

### **Maintenance of status**

An applicant for change of status must be “in status” at the time he or she applies for the change. If an applicant has failed to maintain the terms and conditions of his or her nonimmigrant status (for example, by working without authorization, failing to engage in the activity that was the basis for holding that status, etc.), then a change of status application cannot be approved. Please note that the primary visa holder (such as F1) must be in valid status before the dependent (F2) can change status. 8 C.F.R. § 245.1(h). **Your current nonimmigrant status may not expire more than 30 days before the report date of your new I-20.**

### **Timely filing**

An application for change of status must also be filed in a timely fashion, which means that it must be received by USCIS before the period of previously authorized stay expired. It is extremely important to abide by the timely filing requirement, since staying the U.S. beyond the period of stay authorized can lead to severe immigration penalties.

### **Completeness of forms and documentation**

USCIS adjudicators report that the most common reason for denial is that the forms are not complete and/or the documentation is inadequate. You must carefully check over your application before submission. Some other common errors include:

- The application is not signed in blue ink
- The required fee is not attached, is not in the proper amount, or the check is not signed or properly completed
- Outdated or incorrect application forms are used

### **Discretionary factors**

USCIS officials have the right to exercise discretion in applications for change of status. The following are possible areas of inquiry by USCIS officials.

### **Financial ability**

An F-1 applicant is required to show sufficient funding to cover tuition and living expenses. You must prove to USCIS that you will not need to resort to unauthorized employment in order to support yourself in the US and that you will not become a public charge.

### **Preconceived intent**

If USCIS believes that at the time you entered the U.S. in your current nonimmigrant status you had a “preconceived intent” to actually be in the status now being requested, the application for change of status can be denied on the theory that you tried to circumvent the visa process by entering on one visa and then changing to another status after entry.

USCIS takes several things into account when considering whether an applicant may have had a preconceived intent, including

- the time between entry in one status and an application to change status and
- when and how quickly the applicant began taking steps towards obtaining the new status.

### **Immigration history**

It is possible that the USCIS adjudicator will inquire about your nonimmigrant history. The adjudicator is looking to see if there were periods of unauthorized employment in your history, whether you are currently maintaining status, and whether you are restricted from using the new category based on having used the category before.

## **Nonimmigrant intent**

Linked to the immigration history inquiry is an inquiry as to whether you continue to have temporary "nonimmigrant" intent. If the USCIS believes that the application for change of status is just an attempt to prolong your stay in the US indefinitely, USCIS may deny the change of status application on the theory that the alien "abandoned" his or her nonimmigrant intent. USCIS will take into account any steps towards applying for permanent residency in determining whether you continue to have nonimmigrant intent.

## **Status of a nonimmigrant while an application for change of status is pending**

Generally, nonimmigrants who have filed a timely application for change of status can remain in the United States while their application is being adjudicated by USCIS. This assumes that the person was in valid nonimmigrant status when he or she filed the application.

## **Change of Non-Immigrant Status from F2 to F1**

Applicants for change of status from F-2 to F-1 status are not permitted to begin a course of study until their application has been approved by the USCIS. Specifically, effective January 1, 2003, "An F-2 spouse or F-2 child desiring to engage in full-time study . . . must apply for and obtain a change of nonimmigrant classification to F-1, J-1, or M-1 status. An F-2 spouse or F-2 child violates his or her nonimmigrant status by engaging in full time study." The exception to this regulation is that an "F-2 child may only engage in full time study if the study is at an elementary or secondary school (kindergarten through twelfth grade)."

## **Change of Non-Immigrant Status from B2 to F1**

Applicants for change of status from Visitor for Business or Pleasure (B-1/B-2) status to Nonimmigrant Student (F-1) status are not permitted to begin a course of study until their application has been approved by the USCIS.

## **Application Process**

- Before you are eligible to apply for an I-20 you must have already been admitted to Temple University
- You should complete and submit an I-20 application. You can download the I-20 application from our website at [www.temple.edu/ois/pdfs/i20app.pdf](http://www.temple.edu/ois/pdfs/i20app.pdf) You must let us know if you plan to travel outside the US or if you would rather file a Change of Status. Please read the information on this handout very carefully so you can make an informed decision.
- OIS will contact you when your application for an I-20 is complete. You can either pick up the I-20 for travel OR schedule an appointment for a change of status.

## **If you decide to submit a COS application in the US, read this handout very carefully and bring the following materials with you to your appointment:**

1. Completed and signed in blue ink Form I-539 (available from our office and on-line at <http://www.immigration.gov/graphics/formsfee/forms/i-539.htm>)
2. Proof of academic registration for next available semester if you are eligible (F2s and B2s should NOT register)
3. Personal check, certified bank check (preferable) or a money order payable to the USCIS for US\$300.00
4. **A statement to USCIS explaining why you wish to change your status. See below for instructions on how to write the letter**
5. Legible copy of the biographical and visa page(s) of your passport, the visa on which you last entered the United States, the most recent US admission stamp in your passport and Form I-94 (Arrival/Departure Card) - Do not submit copies of blank passport pages or copies of entry stamps to countries other than the U.S.
6. Copies of any other documentation submitted to or received from the USCIS
7. Copy of marriage/birth certificate if you are in a dependent status (F-2, H-4, L-2, etc.)
8. Proof that primary visa holder is maintaining her/his status. This might include a statement from the primary's employer plus copies of recent pay stubs and I-94 card if s/he is in H-1 or L-1 status or copies of the F-1's transcripts and enrollment verification if you are in F2 status

After you receive the new I-20/ DS-2019 from our office you will need to **pay the SEVIS fee online** at [www.fmjfee.com](http://www.fmjfee.com) You will not be able to pay this fee until our office has issued you an I-20 / DS-2019. Include proof of payment with your COS application. Please provide our office with a copy of your payment.

We are happy to answer any questions you have concerning your application during your appointment. However, please *prepare as much as you can before meeting with us*. Often students need a second appointment to finish up the COS application.

### **Preparing a Statement about Changing Non-Immigrant Status**

Explain how and when you decided to go to school and apply for a change of status. Since you did not intend to be a student at the time of your visa application at a U.S. Embassy or Consulate abroad, describe very carefully how you came to change your mind. You should not have reached such a decision quickly; rather, the decision should be based on new information you received from reading, speaking to friends from home, or talking to your other people. The immigration officer who reads your application may suspect that you **knew** you were going to be a student before you entered the US. If s/he suspects that you knew, s/he may consider your original application for your current visa status fraudulent and deny the application.

Since you changed your mind after arrival in the United States, you must be very clear about what influenced your decision. In your letter, you should explain your specific academic and professional. You should also address such questions as "What is the highest degree you plan to earn? What is your field of study? Why is it better for you to study in the United States than in your home country?" You should also demonstrate how being educated in the United States will make a better life for you in your home country. It is critical that you confirm that your intent is to obtain an education and then return to your home country. Keep in mind that Nonimmigrant Student (F-1) status is a **non-immigrant** classification and that your plans must be to remain temporarily in the United States.

**A change of status from another non-immigrant visa to Nonimmigrant Student (F-1 or J-1) currently takes between one and four months to be processed. You may and should stay in the United States while awaiting a reply. You may attend classes ONLY if you hold an immigration status that allows you to do so [such as H-4]. Moreover, you are required to maintain your current status until you receive an answer from the USCIS.**

**You are not considered eligible for benefits of the requested status until the COS application has been approved by the USCIS. This means that you may not begin working on-campus until the COS has been approved.** Once an application for change to Nonimmigrant Student (F-1) status has been approved, you must register for and successfully complete full-time enrollment during the remainder of your stay at Temple University, beginning the first available semester after approval of the application.

### **If a Change of Status is granted**

The USCIS will send you a Notice of Action (Form I-797A), a new Form I-94 (Arrival/Departure card), and the relevant pages of the Form I-20; the Form I-797A and the Form I-20 will indicate "Change of Status granted on DATE from YOUR CURRENT STATUS to F-1 - D/S". Even though the Change of Status is granted inside the United States, it does not grant you a new visa. Rather, you will need to apply for an F-1 visa at a US Consulate outside of the United States to re-enter the US in F-1 status. Be careful when traveling outside the US borders.

### **If your application for a change of status is denied**

The USCIS will send you a Notice of Action (Form I-797A) which may indicate a VOLUNTARY DEPARTURE date. In this case, you will need to request a new Form I-20 from our office before you leave the US if you intend on returning to the US to pursue studies at Temple University. You will need to apply for a visa outside the US to return in valid F-1 status. Please schedule an appointment with an immigration advisor in our office as soon as possible so we can discuss strategies with you.

### **Change from Exchange Visitor (J-1) status to Nonimmigrant Student (F-1) status:**

If you hold J-1 status, you may only for a change of status within the United States only if you are not subject to the two-year home residency requirement. If you are subject to the requirement, you must receive a waiver of the requirement before applying for a change of status within the US. An Exchange Visitor who is subject may leave and apply for an F-1 visa outside the US, reentering in F-1 status. Individuals with questions about Exchange Visitor (J-1) status should consult with one of the immigration advisors in the Office of International Services.

### **APPLYING FOR A CHANGE OF STATUS IN THE U.S. VERSUS TRAVEL AND RE-ENTRY**

The alternative to submitting an application to the USCIS for a change of status is to travel outside the US and apply for an F-1 entry visa at a U.S. Embassy or Consulate. You can find contact information for most U.S. embassies and consulates online at <http://usembassy.state.gov/> Students who are eager to begin studies may wish to apply for a student entry visa at a U.S. Embassy in Canada or Mexico. Although there is the risk of having the visa application denied, many students do not want to wait several months for the USCIS to make a decision regarding their application. While there are no guarantees regarding a student's successful application, quite a few students have gone to a U.S. Embassy and successfully obtained a student entry visa. This allowed them to begin studying and working on-campus immediately upon entry into the US in F-1 status.

If you chose to try to travel to Canada or Mexico, you need to know if you need a visa to enter the respective country. To do so you can visit the following websites:

[www.dfait-maeci.gc.ca/can-am/new\\_york/](http://www.dfait-maeci.gc.ca/can-am/new_york/)

[www.canadianembassy.org/index2.asp](http://www.canadianembassy.org/index2.asp)

<http://ciudadjuarez.usconsulate.gov/www/niv.html>

<http://mexico.usembassy.gov/mexico/evisas.html>

<https://www.nvars.com/use/>

Information on who needs an entry visa to Canada and how to obtain one is available at [www.cic.gc.ca/english/visit/index.html](http://www.cic.gc.ca/english/visit/index.html).

If you have violated your non-immigrant status because you have overstayed your visa are not eligible to apply at a border post. In other words, if you have remained in the U.S. longer than the period authorized by the Immigration Officer when you entered the U.S. in any visa category, you must apply for a visa in your home country. You should be aware that you may encounter difficulties at the time of interview when you apply for a visa outside of your home district.

Consular officers at border posts will deny visas when they believe there are fraud indicators present or when their lack of knowledge of local conditions and familiarity with documents in the third country prevents them from properly adjudicating the case.

### **Some benefits of traveling outside the US to apply for an F-1 entry visa**

- If the application is going to be approved, it is frequently approved quickly (but not always)
- If you re-enter in F-1 status, you are entitled to the benefits of that status immediately, including on-campus employment
- If you apply for an entry visa in Canada or Mexico, it is our understanding that the security check is processed before you arrive at the embassy or consulate. Please note that this does not guarantee the visa will be issued.

### **Some disadvantages of applying for an F-1 entry visa**

- Some applicants must go through a security check. There is no way of knowing who will be subject to a security check, nor is there a way to expedite its progress. A security check can take weeks or months to be processed
- Your application for an F-1 entry visa could be approved, but if you are subject to a security check, the approval could take months

- The application could be denied. In that case, you would not be permitted to re-enter the U.S. in F-1 status. You may, if you have another valid entry visa, enter in another non-immigrant status, but you would not be in F-1 status, nor would you be entitled to any of the benefits of F-1 status
- If you don't have another valid entry visa, you would have to apply for a new entry visa and wait for its approval.
- You cannot enter the US more than 30 days before the report date indicated on the I-20.

Please consult with your immigration attorney if you have a green card application pending.

### **Some benefits of applying for a Change of Status**

- You don't have to travel and risk being separated from your spouse/parent (for individuals in a dependent status).
- This process is generally less expensive (you have to pay \$100 Sevis fee and \$195 application fee, but no plane fare).

### **Some disadvantages of applying for a Change of Status**

- If the application for a change of status is approved, it only changes your status in the US. This means that if you travel outside the U.S. during your program of study and wish to re-enter in F-1 student status, you would still need to apply for the F-1 entry visa at a US embassy or consulate. You should review the pitfalls of applying for a US visa at an embassy or consulate above as they will apply to you; that is, you could be refused the visa, be subject to a security clearance, etc.
- A COS application can take months. If you are in a status that prohibits study [such as F-2 or B-2], you may not begin study until the application is approved. You may be required to defer your admission if you do not receive an approval notice in time to begin the desired semester
- If the application is denied and your previous status has expired, you will not have any valid non-immigrant status in the US. For example, if your B-2 status expires and your COS application is denied, you will not be in valid non-immigrant status and will be required to leave the US on very short notice, possibly causing an interruption in your program of study at an inconvenient or academically disadvantageous time
- Anyone in Exchange Visitor (J) status who is subject to the two-year home residence requirement cannot apply for a change of status in the US
- Individuals who have recently entered the US in B-2 status (without the prospective student annotation) should plan to travel as a Change of Status might be very difficult
- Individuals in WT or WB status cannot change their status in the US