



CHANGE OF NON-IMMIGRANT STATUS

If your I-94 card has expired, our office can not assist you in preparing your paperwork for a Change of Status (COS). You should seek the services of an immigration lawyer. The Office of International Services has available a listing of Philadelphia-area attorneys who practice immigration law.

If you currently are holding a WT (Visa Waiver), you may not extend or change your status. You must depart the United States and re-enter in the desired status.

Change of Status

When an individual presents him or herself at a U.S. port of entry, he or she expresses an intent. It might be that they seek to enter in order to pursue a degree or to conduct research or to go skiing. The intention and the enabling documents determine the nonimmigrant category in which they are admitted. This intention is expressed by the individual to the inspector, in response to the inspector's question of why the person wants to come to the United States. Sometimes, however, people come for one reason and then change their minds. The law provides for such situations by allowing someone to apply from one nonimmigrant classification to another.

Eligibility for change of status

USCIS must make two determinations in the course of adjudicating a change of status application filed under 8 C.F.R. Part 248:

1. Is the person eligible for the nonimmigrant status being requested? and
2. Is the person eligible to have his or her status changed in the United States?

Is the person 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 change of status applicant to establish eligibility for the particular nonimmigrant status being requested.

Is the person eligible to have their 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. A person could be generally eligible for a particular nonimmigrant classification, but if he or she is not eligible for a change of status, he or she cannot change to that classification in the United States.

Ineligibility for change of status does not necessarily mean that a person cannot obtain a particular nonimmigrant status; it just means that they cannot obtain the status through the change of status procedure. If an alien is ineligible to change his or her status in the United States, he or she should still inquire about eligibility to obtain the status by exiting the United States, applying for the appropriate nonimmigrant visa at a U.S. consular office, and then re-entering the United States to be admitted in the desired status.

USCIS will review the following factors to determine eligibility for change of nonimmigrant status

- Statutory eligibility
- Timely filing and maintenance of prior status
- Completeness of forms and documentation
- Discretionary factors:
- Preconceived Intent
- Prior immigration history
- Financial ability

Statutory eligibility

The Immigration and Nationality Act prohibits change to or from certain nonimmigrant categories. Some aliens are in a classification 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).

Timely filing and 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. 8 C.F.R. § 245.1(h)

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. 8 C.F.R. § 248.1(b) 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. The best advice is a careful double check of the instructions, the forms, and the supporting documentation. Some other common errors include:

- The application is not signed
- 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.

Preconceived intent

If USCIS believes that at the time the applicant entered the U.S. in his or her current nonimmigrant status the applicant 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 the applicant 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
- When and how quickly the applicant began taking steps towards obtaining the new status

Financial ability

Certain statuses may require showing that sufficient financial resources exist to allow the applicant to accomplish his or her purpose. An employment-based category may require the employer to show that what they say they will be offering actually exists. An F-1 applicant is required to show sufficient funding to cover tuition and living expenses. The underlying themes of the financial ability inquiry is that USCIS needs to be convinced that the alien will not need to resort to unauthorized employment in order to support themselves in the U.S., and that the alien will not become a public charge.

Immigration history

It is possible that the USCIS adjudicator will inquire about the nonimmigrant history of the applicant. The adjudicator is looking to see if there were periods of unauthorized employment in the applicant's history, whether the applicant is currently maintaining status, and whether the alien is 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 the alien continues to have a temporary "nonimmigrant" intent. If the USCIS believes that the application for change of status is just an attempt to prolong the alien's stay in the U.S. indefinitely, USCIS may deny the change of status application on the theory that the alien "abandoned" his or her nonimmigrant intent.

Taking steps towards applying for permanent residency may also be taken into account by USCIS in determining whether an alien continues to have nonimmigrant intent. Particularly where a nonimmigrant status requires the alien to intend to return to a residence maintained abroad, official steps towards permanent residence like the filing of a preference petition can affect the determination of 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 to a different nonimmigrant status or have filed an application for extension of stay 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.

Travel outside the United States while an application for change of status is pending

USCIS considers an application for change of status to be "abandoned" if the applicant exits the United States while the application is pending. USCIS headquarters had issued instructions to its field offices to deny change of status applications if at any time such travel came to the attention of USCIS.

Change of Non-Immigrant Status from F2 to F1

The U. S. Department of Homeland Security has passed new laws concerning the eligibility of individuals in Nonimmigrant Student Dependent (F-2) to study full-time at academic institutions in the United States. 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. That is, prospective students who entered the United States in Visitor for Business or Pleasure (B-1/B-2) status must receive an approval notice from the USCIS confirming approval of an application for change of status to Nonimmigrant Student (F-1) status before engaging in studies at an academic institution.

Application Process

In order to apply for a Change of Status (COS), a prospective student must first secure a Certificate of Eligibility for Nonimmigrant (F-1 or J-1) Status (Form I-20 or DS-2019) from Temple University. To be eligible for this document, the individual must submit to Temple University both an application for admission and an application for a Form I-20 or DS-2019. The Office of International Services may not issue a Form I-20 or DS-2019 to a student until that individual has been officially admitted to Temple University and has provided all required documentation for a Form I-20 or DS-2019. Once your application for an I-20 or DS-2019 is complete you will be notified. At that point, you may schedule an appointment with an advisor by calling 215 204 7708.

An application submitted to the US Citizenship and Immigration Service (USCIS) for a change of nonimmigrant status should include at least the following items:

- 1) Completed and signed Form I-539 (available from our office and on-line at <http://www.immigration.gov/graphics/formsfee/forms/i-539.htm>);
- 2) Letter from prospective student addressed to the USCIS explaining the following:
 - a) the need and eligibility for the change your status (see below);
 - b) evidence to establish that you have a residence abroad to which you intend to return
 - c) a statement in which you describe your intentions concerning your departure from the United States. Keep in mind that the F-1 and J-1 student classifications are **non-immigrant classifications**. You have the intent of returning to your home country upon completion of your degree and any period of optional practical training. If the USCIS is not convinced that you have the intention of returning home, your request for a change of status will be denied.
- 3) Form I-20 or DS-2019 issued by Temple University;
- 4) Proof that you have paid the \$100 SEVIS fee. You can read more about this fee online at www.fmjfee.com. The fee can also be paid on line at that site.

- 5) Financial documentation confirming financial resources to be a student in the United States which will include:
 - a) evidence that you have the ability to financially maintain yourself throughout the duration of your stay. The most persuasive evidence would be a statement of a bank account showing a consistent level of activity. This must include the entire time you will be in school not just for the first year as shown on your Certificate of Eligibility for Nonimmigrant (F-1) Student Status
 - i) a detailed statement from your sponsor or sponsors explaining their reasons for offering you their financial support. If the sponsors are related to you, submit documentary evidence to establish the claimed relationship.

If you are counting on a local sponsor for assistance then:

- b) submit a detailed statement from your sponsor or sponsors explaining their reasons for offering you their financial support. If the sponsors are related to you, submit documentary evidence to establish the claimed relationship.
- c) Submit documentary evidence, such as copies of Income Tax Returns, or other documentary evidence such as proof of past financial support that your sponsors are able to fulfill their offer.
- d) If you submit documentation that includes foreign currency denominations, you should submit the converted amounts into United States dollars: include the source for the currency conversion exchange. They should be current rate contemporaneous with the documentation, whichever is more applicable for the purpose of establishing eligibility for the benefit sought.
- 6) Letter of Admission, proof of academic registration for next available semester if changing to Nonimmigrant Student (F-1) student status **and** evidence that you have paid the school tuition in the form of a canceled check, money order or receipt from the school;
- 7) Personal check, certified bank check (preferable) or a money order payable to the USCIS for US\$195.00;
- 8) Legible copy of the biographical and visa page(s) of prospective student's passport;
- 9) Legible photocopy of the personal data pages of your passport, the visa on which you last entered the United States, and the latest United States admission stamp in your passport;
- 10) Legible copy of prospective student's Form I-94 (Arrival/Departure Card);
- 11) Copies of any other documentation submitted to or received from the USCIS;
- 12) Letter from your foreign student advisor setting forth the date the school was first contacted in your behalf and the date you filed your application for admission to the school. This letter will be written at the time of your appointment

13) If the prospective student currently holds dependent status [such as Nonimmigrant Student Dependent (F-2) or Nonimmigrant Worker Dependent (H-4)] and wishes to change her/his, s/he should include copies of a marriage certificate as well as proof that the primary visa holder is maintaining her/his status. If you are in H-4 status, this would include a statement from your spouse's employer plus copies of recent pay stubs and I-94 card. If you are in F-2 status, this would include copies of your spouse's transcripts and enrollment verification from your spouse's school.

Prospective Temple University students must submit an application for a Change of Status to

***US Citizenship and Immigration Service
Vermont Service Center
75 Lower Weldon Street
St. Albans, VT 05479-0001***

If you have any questions concerning either the statement or the I-539, we will help you during your appointment. However, *please prepare as much as you can before coming to the appointment.*

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 family or other persons. The immigration officer who reads your application may suspect that you **knew** you were going to be a student before you entered the United States. If s/he suspects that you knew, s/he may consider your original application for your current visa status fraudulent and deny the application for change of status to Nonimmigrant Student (F-1).

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.

N.B.: A change of status from another non-immigrant visa to Nonimmigrant Student (F-1 or J-1) currently takes between one (1) and four (4) months to be processed. An applicant may and should stay in the United States while awaiting a reply; the applicant may attend classes **ONLY** if s/he is holding an immigration status that allows her/him to do so [such as Nonimmigrant Worker Dependent (H-4)]. Moreover, the applicant is required to maintain the current status until s/he receives an answer from the USCIS.

An applicant for a change of status is not considered eligible for benefits of the requested status until the application for a change of status has been approved by the USCIS. Once an application for change to Nonimmigrant Student (F-1) status has been approved, the beneficiary must enroll in and successfully complete full-time enrollment during the remainder of her/his 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 the applicant a Notice of Action (Form I-797A), a new Form I-94 (Arrival/Departure card), and the relevant pages of the Form I-20 or DS-2019; the Form I-797A and the Form I-20 or DS-2019 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, this change of status does not grant the applicant a new visa. Rather, an applicant whose application for a change of status is approved will need to apply for a new visa at a U. S. Consulate outside of the United States to re-enter the United States in the Nonimmigrant Student (F-1 or J-1) status. Therefore, an individual whose application for a change of status has been approved should be careful when traveling outside the U.S. borders.

If your application for a change of status is denied

The Bureau of Citizenship and Immigration Services will send the applicant a Notice of Action (Form I-797A) indicating a VOLUNTARY DEPARTURE date. In this case, before you leave the United States, you will need to request a new Form I-20 or DS-2019 from our office if you intend on returning to the United States to pursue studies at Temple University. You will need also to leave the U.S. by the date indicated on your Notice of Action. You will need to apply for a visa outside the United States to return in valid Nonimmigrant Student (F-1 or J-1) status with a Form I-20 or DS-2019 issued by this our office.

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

An individual who entered the United States in Exchange Visitor (J-1) status may apply for a change of status within the United States only if s/he is not subject to the two-year home residency requirement. If the individual is subject to the requirement, s/he must apply for and receive a waiver of the requirement before applying for a change of status within the United States. Individuals with questions about Exchange Visitor (J-1) status should consult with one of the international student advisors in the Office of International Services. If you find that your change of status has been denied, you may wish to consult with an immigration attorney regarding potential hazards such as "visa overstay" and "illegal presence".

Travel and Re-entry:

The alternative to submitting an application to the USCIS for a change of status is to travel outside the U.S. and apply for an F-1 entry visa at a U.S. Embassy or Consulate. Students who are eager to begin studies may wish to apply for a student entry visa at a U.S. Embassy in Canada. 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 immediately as they were able to re-enter the U.S. in F-1 status.

To do this, you must first determine whether or not you need a visa to enter Canada. Information on who needs an entry visa to Canada and how to obtain one is available at <http://www.cic.gc.ca/english/visit/index.html>.

If you are in the United States and you wish to schedule an appointment, you can apply online at <http://travel.state.gov/tcn.html>. You can also call 1-900-443-3131; in Canada you should call 1-900-451-2778.

Calls through the 1-900 system are automatically charged to the caller's telephone bill. Callers from the United States or Canada who would prefer to charge the cost of the call to a credit card may schedule an appointment by calling 1-888-840-0032. Unlike the 1-900 numbers, which are blocked from most hotels, office or pay telephones, the credit card line can be accessed from virtually any telephone. The appointment system requires a touch-tone phone; a pushbutton rotary phone will not work.

Individuals who have ever been out of status in the United States because they overstayed their 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 the country of your nationality. If you are not certain about your status, check with the nearest U.S. Citizenship and Immigration Service (USCIS) office. Individuals seeking appointments should be aware that applicants may be more likely to encounter difficulties at the time of interview when they apply for a visa outside of their 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.

If your visa application is denied, you will not be permitted to re-enter the U.S. and will be required to return home to make any additional visa applications.