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To Change Status to Student or Worker, One Doesn't Have to Leave the U.S.

By Reuben S. Seguritan

An alien who entered the US on a nonimmigrant visa may change to a different nonimmigrant classification while remaining in the US. This process is called change of status and has benefited aliens particularly those who entered on a visitor's visa.

Before the INS approves a change of status, it will closely scrutinize the application to determine the intention of the alien. If it determines that the alien had a preconceived intent to work or to study here but acquired a visitor's visa as a means of entry, then the application will most likely be denied for fraud. The INS will also deny an application if it suspects the alien has no intention of going back to his home country.

To be eligible for a change of status, an alien must have been lawfully admitted as a nonimmigrant. This would disqualify aliens who crossed the border to get here or those who jumped ship. The alien must also have maintained a lawful nonimmigrant status and has not violated the conditions of his stay. Thus, accepting unauthorized employment, overstaying the limits of his visa, or changing school without prior permission from the INS may result in the denial of his application.

When filing an application, timing is an important factor. The alien must apply before his authorized stay expires, but he must not apply shortly after entry because as this would be an indication of preconceived intent. An applicant must also make certain that he meets the requirements for the classification he is applying for. If he intends to apply for an H-1 visa for instance, he must have the educational or work experience necessary to qualify, or if he intends to change to student visa, he must meet the qualifications to pursue a course of study.

Unfortunately not everyone can apply for a change of status. Holders of Transit visa (C), Crewmen (D), Fiancee (K), and, generally, Exchange visitors (J) are not eligible to change status. Aliens under any of these categories may have to apply at a US consulate for a nonimmigrant visa.

Persons applying for change to student status must consider the following:

1. Do not start classes prior to submitting the application. While the INS will not deny an application solely for this reason, it will closely scrutinize it to determine whether alien entered with preconceived intent to change status.
2. When you have not selected the school yet and you are entering the US on a visitor's visa, have the consul note on the visa that you are a prospective student thus eliminating the issue of preconceived intent.
3. An applicant must have evidence of sufficient financial support to fund his studies for the period of the academic program.
4. Applicant for change of status to vocational student classification will not be granted if it is determined that alien will use his vocational training to qualify for temporary work status.

5. A change from vocational to academic student will not be granted.
6. A change from vocational student status to that of temporary work status will not be granted if vocational training or education received enables him to qualify for temporary worker.
7. Change from academic student to J-1 exchange visitor will not be granted unless change will subject the applicant to 2 years foreign residence requirement.
8. A student, after finishing his course or practical training has sixty days to file for a change of status before he may be required to leave the US.