

Changing Nonimmigrant Status

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Many Filipinos come to the US as nonimmigrants, meaning they come to the US either as visitors (B-1 or B-2), students (F-1, J-1, M-1), or workers (H-1B, L-1).

Nonimmigrants may stay in the US for a limited period or for a specific purpose. When such authorized period expires or the specified purpose is accomplished, the nonimmigrant visa holder must leave the US, otherwise, his/her continued stay in the US would then be considered illegal.

In contrast, immigrants or green card-holders may stay in the US for an indefinite period of time and may eventually qualify for naturalization as US citizens.

There are instances when the personal circumstances of a nonimmigrant changes and a corresponding change in the immigration status must be made. Can one change from one nonimmigrant status to another? The answer is, generally, yes, changes can be made.

From tourist to student or worker

The most common example is the change of status from visitor to student or worker. The change can be made provided the so-called "intent problem" is overcome. The "intent problem" stems from the fact that one is issued a B-2

visa on the basis of his/her representation that she visits the US and then leaves.

If a person enters the US as a visitor and applies to change his or her visa to student or working visa, say, within 30 days of entry, s/he would be deemed to have a preconceived intent to study or work. In other words, the applicant did not really intend to tour or visit the US, as s/he represented when applying for a tourist visa. As a consequence, the US Citizenship and Immigration Service (USCIS) would

consider the change of status improper and deny the application.

Overcoming Intent Problem

To overcome the intent problem, it would be advisable for the visitor to apply for a change of status to a student or working visa *at least* after 60 days from entry. To avoid it, there must be no evidence of preconceived intent such as obtaining the school certificate before entering the US, or requesting for the (Student and Exchange Visitor Information System) SEVIS I-20 A/B within 60 days after entry.

From student to worker

A student visa holder who has overstayed but has filed a timely change of status application and did not engage in unauthorized employment will not be considered out-of-status while the application is pending. A change of status application would generally be considered abandoned if the applicant leaves the US while it is pending.

H to L Visa

An H visa holder cannot change to L, and an L visa holder cannot change to H once the maximum period under the visa s/he is currently holding has been reached when the application is filed. The maximum period of stay under the H visa is six years, while that under the L visa is either 5 or 7 years.

Change of Status Not Allowed

Certain persons may not change their status, such as those under the following visa categories: C (transit); D (crewman); K (fiancee), J (student or exchange visitors subject to 2-year residency requirement); or S (informant). An M-1 holder cannot change to F-1 or to H-1, if the latter is based on his/her M-1 training.