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LEGAL NOTES

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Tips on changing your non-immigrant status

Changing a non-immigrant status to another non-immigration classification without the alien having to leave the US is permitted. Aliens, particularly those who entered on a tourist visa, benefit from this process called change of non-immigrant status.

However, with the influx of fraud-related cases on the issuance of visas, the INS will most certainly examine each application to determine the real intent of the alien before any approval can be granted. If the INS concludes that the alien used a tourist visa as a means of entry but had a preconceived intent to work or to study here, then the application will most likely be denied for fraud. It will also deny an application if an alien is suspected of not intending to return to his home country.

To be eligible for a change of status, an alien must have been lawfully admitted as a non-immigrant. This would disqualify aliens who crossed the border to get here or those who jumped ship. The alien must also have maintained a lawful non-immigrant 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 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. Transit aliens, crewmen, fiancées and exchange visitors are not eligible to change status. Aliens under any of these categories may have to apply at a US consulate for a non-immigrant visa.

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

- 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 the alien entered with preconceived intent to change status.

- 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.

- An applicant must have evidence of sufficient financial support to fund his studies for the period of the academic program.

- 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.

- A change from vocational to academic student will not be granted.

- 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.

- A change from academic student to J-1 exchange visitor will not be granted unless the change will subject the applicant to a two-year foreign residence requirement.