

APPLYING FOR AN H-1B, L-1, OR O-1 VISA AT A U.S. CONSULATE | FAQ

1. Who needs a visa to enter the United States to work?

All nonimmigrants, except Canadian citizens who are visa exempt, need a visa stamp in their passport to enter the U.S. to work. Dependents (i.e., spouse, children) who are not Canadian citizens also need a visa stamp to enter the U.S. in dependent nonimmigrant status. The situation for Canadians is addressed in a separate memo on our website, Travel Issues for Canadian citizens, <http://www.jackson-hertogs.com/?p=9669>. The memo that you are now reading is designed for persons who are not visa exempt and must obtain a visa stamp in their passport to enter the U.S.

2. What type of visa is needed to enter the United States?

This depends on your reason for coming to the U.S. If you are coming to the U.S. to work for an employer as a professional engaged in a “specialty occupation,” you will be applying to enter the U.S. in H-1B status and will need an H-1B visa stamp in your passport to enter. If you are coming to the U.S. to work for an employer as an intracompany transferee, you will be applying to enter the U.S. in L-1 status and will need an L-1 visa stamp in your passport. If you are coming to the U.S. to work for an employer as an alien of extraordinary ability in your field, you will be applying to enter the U.S. in O-1 status and will need an O-1 visa stamp in your passport. All visa stamps are issued by U.S. consulates abroad. Note: There are other types of work-related nonimmigrant statuses that also require visa stamps (i.e., E, P, and R), but this memo addresses only visa stamps for those individuals applying to enter the U.S. in H-1B, L-1 or O-1 status. If you are a dependent of an H-1B, L-1 or O-1, you will need an H-4, L-2 or O-3 visa stamp, respectively.

Note on individuals who previously held J status: Applicants for H-1B or L-1 visa stamps who previously held J status and were subject to a home-country requirement must have complied with or obtained a waiver of that requirement before they can obtain an H-1B or L-1 visa stamp in their passport.

3. How is the choice of U.S. Consulate made?

Generally, a U.S. Consulate in the applicant’s home country must review his or her application for a visa stamp. Other U.S. Consulates may review a Third Country National (TCN) application for a visa stamp, but it is at the discretion of each U.S. Consulate; that is, they may refuse to review the application if you are a TCN. Visa stamp applicants should always check the individual U.S. Consulate’s website (see the Travel Issues page on our website, <http://www.jackson-hertogs.com/?p=4801>, for links to individual U.S. Consulate websites) or contact the Consulate to determine hours of operation, policies, procedures and consulate specific documentary requirements. Some U.S. Consulates have more demanding requirements, and may require, for example, originals of documents filed with the H-1B petition as well as copies of employment contracts. Most U.S. Consulates will refuse to process the visa application of a TCN who has no ties to that country; however, most of the U.S. Consulates in Canada and Mexico will accept and process visa applications from TCNs. As with any U.S. Consulate, however, the border Consulates may reject appointment requests based on nationality of the applicant, among other reasons.

4. How does one get a visa stamp in his/her passport from a U.S. Consulate?

A nonimmigrant petition is filed on Form I-129 by your employer and requests either a change of status (COS) or extension of status (EOS), if the beneficiary is eligible and in the U.S. The Form I-129 will be filed as a “cable notification” petition, if the beneficiary is either outside the U.S. or is not eligible or does not desire to file the petition as a COS or EOS. The I-797 approval notice will indicate whether the case was approved as a COS, EOS, or cable notification petition.

If/when the USCIS approves the nonimmigrant visa petition, a copy of the approval notice and the filed petition is forwarded to a processing center in Kentucky that uploads the information into a system called PIMS. Once the approval and petition are uploaded, any consular officer can access a copy of the petition approval notice and of the filed petition. If the documents cannot be located in PIMS, the Consular Officer can place an internal inquiry to follow up on the approval notice.

Cable Notification: This type of approval is usually appropriate when the individual is outside the United States or will be outside the United States when the petition is approved. If the individual is in the U.S. but is not eligible to change or extend status or there is a reason not to have such action taken, then the case is fled with a request to notify a Consulate or Preflight/Border inspection unit. In this situation, when the petition is approved, USCIS takes no action regarding the individual’s status if he/she is already in the U.S. and the PIMS system is simply updated regarding the approval. If you are in the U.S., the petition approval does not affect your status in any way. You must apply for your visa stamp at the U.S. Consulate and enter the U.S. in your new nonimmigrant status to be work authorized for your employer in the new status.

Change or Extension of Status: When a COS or EOS petition is approved, your status is automatically changed or extended as of the I-797 approval notice’s effective date. You do not need to apply for a new visa stamp in your passport to work for your employer in the new or extended status. If you

depart the U.S. after the approval, however, you must apply for your visa stamp at a U.S. consulate if you do not already have a valid visa stamp in the same category (i.e., 1: you were admitted to the U.S. in F-1 or J-1 status, and changed your status to H-1B, L-1 or O-1—you will need to apply for an H-1B visa stamp in your passport before you can return to the U.S. in H-1B status; 2: you were admitted as an H-1B, L-1, or O-1, filed an extension of status, but you do not have a valid H-1B, L-1 or O-1 visa stamp—you will need to apply for a new visa stamp before you can return to the U.S.; 3: you were admitted to the U.S. in H-1B or O-1 status and you changed employers and filed an extension of status petition and you have a valid visa stamp from your previous employer—you will not need to apply for a new visa stamp and can reenter the country with the old visa stamp so long as it is in the same category and is valid when you apply to reenter the U.S.).

5. What documents does the U.S. Consulate require when applying for a visa stamp?

With the advent of the use of PIMS to verify that petitions have been approved, some U.S. Consulates have been more lenient on the documents required to process a visa application. That said, it is best to check the web site of the particular U.S. consulate to which you will apply for the visa. Generally, U.S. consulates will typically require the following documents, which are furnished by our office upon receipt of the I-797 approval notice:

1. A complete attorney certified copy of the H-1B, L-1, or O-1 petition (provided to you after approval);
2. Original approval notice (Form I-797) (provided to you after approval);
3. An updated employment verification letter (furnished by your employer) if any changes have occurred between the filing of your H-1B, L-1, or O-1 petition and your appointment at a U.S. consulate (see our website for a sample letter: <http://www.jackson-hertogs.com/?p=9733>). NOTE: most consulates will also accept copies of recent pay stubs and if the petition was recently approved, will not require a letter or pay stubs.
4. The “confirmation page” of your completed Department of State visa application form, the electronic State Department Form DS-160. You need not bring your entire DS-160 application; your DS-160 confirmation page is all the US Embassy needs to retrieve your data. However, you must bring the DS-160 confirmation page with you during all phases of the application process. Without the confirmation page, it may not be possible to access your application and process your visa case. The DS-160 can only be created by you online; we cannot prepare it for you. Please note that it must be created not only for you, but for any and all family members who will accompany you to the United States. To create the DS-160 online, please visit the following URL: <https://ceac.state.gov/genniv>. To learn more about the DS-160, please review the State Department FAQ at this URL: http://travel.state.gov/visa/forms/forms_4401.html. If you encounter any difficulties creating the DS-160 form, please contact our office for assistance.

Frequently asked questions about how to fill out Form DS-160:

- “Have you made specific travel plans?”
 - Answer: If you have made specific travel plans to enter the U.S., write the specific travel dates.
 - “Address where you will stay in the U.S.”
 - Answer: If you know which hotel or the address of the place where you will stay after you enter the U.S., write the address. Otherwise, you can write the work location listed on Page 5 of Form I-129.
 - “U.S. point of contact and Point of Contact’s address, phone number and email address”
 - Answer: If you know who your manager is, you can write your manager’s contact information. Otherwise, write the contact information of the company representative who signed the Form I-129. This information is available on Page 1 of Form I-129.
 - “Name of person/company who filed petition/ organization name”
 - Answer: The information about the company who filed the petition is available on Page 1 of Form I-129. The contact information of the company representative who signed the petition is also available on Page 1 of Form I-129.
 - “Person/entity paying for the trip”
 - Answer: If you are paying for the trip, write “self”. If your employer is paying, write the name of your employer.
5. A passport-size photo taken within the last six months;
 6. A passport valid for six months beyond the status expiration date on your approval notice, unless you are from one of the countries that are part of the “six month club.” See the following link for a complete list of those countries belonging to the six month club: http://cbp.gov/linkhandler/cgov/travel/inspections_carriers_facilities/clp_bulletin_04162008.ctt/clp_bulletin_04162008.pdf. If your country is part of the six month club, your passport must be valid until the expiration date on your I-797 petition. If your passport does not extend to the required date, your admission to the U.S. will be limited to your earlier passport expiration date; and
 7. Visa application fees (minimum machine readable visa fee; additional fees vary by nationality; see the Visa Reciprocity schedule, <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country.html> for fee and visa validity period information.

Dependents applying for a visa stamp should take all the above documents together with documentation of the family relationship (i.e., marriage and birth certificates). Some U.S. consulates may refuse a dependent’s application for a visa stamp if the principal applicant is not present or has not already obtained his/her visa (check with the individual U.S. consulate if you have questions).

Note: You must also contact the U.S. Consulate you plan to visit to determine its hours of operation, policies, procedures, and any additional documentary requirements. See our website for links to specific consulate websites: <http://www.jackson-hertogs.com/?p=4866>.

Important: Keep your original Approval Notice (Form I-797) with you and in your passport at all times.

6. Do U.S. Consulates have additional requirements for change or extension of status cases?

Yes. You must provide evidence of having maintained your nonimmigrant status in the U.S., as this is required for eligibility to file a COE or EOS case.

Typically, copies of these documents are included in the nonimmigrant visa petition filing.

- If you were previously in the U.S. in **F-1 status**, you should bring your I-20, EAD card and transcripts showing that after you were admitted to the U.S. in F-1 status, you were attending school full-time.
- If you were previously in the U.S. in **J-1 status**, you should bring your IAP-66 showing that you were in J-1 status, and, if applicable, documentation that you have either complied with or obtained a waiver of the J-1 home country requirement.
- If you were previously in the U.S. in **B-1 status**, you should bring documentation to show that you completed the business assignment on behalf of your previous employer.

7. Is my fiancé or common law spouse eligible for a dependent visa?

No. U.S. law requires one to be legally married in his/her home country and to present a valid marriage certificate in order to qualify as a dependent under U.S. immigration laws. Under certain circumstances, a U.S. consulate may grant a common law spouse a B-2 visa to accompany his/her spouse to the U.S. If this situation pertains to you, please seek advice from your attorney. Please note that your employer may not cover such legal representation.

8. Are there limits on when I can apply for the visa stamp?

Yes. Most U.S. consulate will not allow you to apply for a visa stamp in your passport more than six months in advance of the first day of the validity period as listed on your I-797 H-1B, L-1, or O-1 approval notice. In other words, if you have an I-797 with validity dates of 06/01/2020 – 06/01/2023, you will not be able to apply for your visa stamp at a U.S. consulate before 01/01/2020.

9. How long will the visa application process take?

Visa application procedures and processing times vary depending on the time of the year, the particular U.S. Consulate, on your nationality, and on security checks, among other things. The application process can take several days to several months. Note that it can also take several weeks or even longer during the peak travel seasons, to obtain a visa appointment. For a list of average processing times and wait periods for a visa appointment at all U.S. consulates, see http://travel.state.gov/visa/temp/wait/wait_4638.html.

10. What is the difference between the Form I-94 and a visa stamp?

Form I-94 ("Arrival Departure Record"): Form I-94 is a record of your entry to the U.S. created by U.S. Customs and Border Protection (USCBP). It tells USCIS and employers what status you were admitted into the U.S. and how long you are allowed to remain in the U.S. in that status. You surrender your I-94 card when you leave the U.S. (with certain exceptions for departures to Canada/Mexico of less than 30 days and for Canadian citizens travelling to Canada). Please note that in addition to the Form I-94, you must also carry your original Form I-797 approval notice with you at all times when travelling in and out of the U.S. The I-797 approval notice is the key document showing the petition validity period and it is evidence of any change of status or extension of status cases that were approved before you travel. The I-797 may be your only evidence that your status was changed and/or extended in the United States. If your status was changed/extended in the U.S., the approval notice will also contain a new Form I-94 on the bottom third of the approval notice.

Visa: The visa stamp is issued by the U.S. Department of State (DOS) and is a machine readable stamp in your passport that contains information regarding your visa classification, your date of birth, your photo, as well as other pertinent information. The visa stamp is not removable once affixed in your passport and allows you to apply to enter into the U.S. for a limited purpose. Examples: An F-1 visa stamp allows you to apply to enter the U.S. in F-1 status to pursue a full course of studies at the school which issued you an I-20. An H-1B visa stamp allows you to apply to enter the U.S. in H-1B status to work for the employer who filed the H-1B petition on your behalf. The visa must be valid at the time that you apply to enter the U.S. If the visa stamp expires while you are in the U.S., you remain in status so long as the I-94 card/record is still valid. Visa stamps can also be valid for a single entry, a specific number of entries, or unlimited multiple entries based on reciprocity agreements between the U.S. government and your home country.

11. What are the risks in applying for a visa?

If you depart the U.S. to apply for a visa stamp at a U.S. Consulate abroad, the visa is denied, and you do not have another valid visa stamp in your passport, you will not be allowed re-entry to the United States. Under a recent change to Department of State (DOS) regulations, currently there is no exception to this rule.

12. What happens if I am selected for additional security checks?

Anyone applying for a visa stamp may also be subjected to various security checks at the discretion of the consular officer. If you are selected for additional security checks, you may be stuck outside the U.S. for weeks, or even months, until your visa application has received all security clearances. For more information, see <http://www.jackson-hertogs.com/?p=424>.

13. I was selected for additional security checks when I applied for a visa before, will this impact subsequent visa applications?

Yes. The DOS views INA § 221(g) notices issued by Consular Officers as part of the visa application process as a **visa denial**. INA § 221(g) is a “catch all” section of the Immigration & Nationality Act that enables the Consular Officer to request additional information on any visa application. This section is relied on in various circumstances, including when the Consular Officer:

- selects an application for a security check or additional “administrative processing” such as a Technology Alert List (TAL) or Visa Mantis check,
- requests additional evidence regarding ties to the home country for a B-1/B-2 visitor visa application,
- requests additional evidence of the relationship between two corporate entities for an L-1 visa application,
- requests original documents for an H-1B visa application, etc.

Generally, once the additional documents are presented, most applicants are issued the visa. In late 2010, the U.S. Department of State began to advise that such a visa issuance delay **is considered a “denial”** that has been overcome. Therefore, any person subjected to a “221(g)” delay in visa issuance must indicate on subsequent visa applications (electronic Form DS-160) and ESTA visa waiver applications that s/he has been denied a visa, **even if the visa was ultimately issued**. DOS has indicated that failure to mark this question “yes” could result in a finding of misrepresentation before the U.S. Government.

14. Do I always have to give up my I-94 card when I leave the U.S. and have a valid visa to enter the U.S.?

Yes, with certain exceptions. When you depart the U.S., you are usually required to surrender your Form I-94 so that USCIS has a record of your departure date, and you are usually not admissible without a valid visa stamp. There is a limited exception for travel to Canada/Mexico for less than 30 days. This exception is referred to as Automatic Revalidation and is valid only if you do not apply for a visa stamp at a U.S. consulate while in Canada or Mexico.

Current regulations provide that if you are departing the United States for less than 30 days and are only traveling to Mexico or Canada (or in some cases, adjacent islands excluding Cuba), you are not required to surrender your original Form I-94. Further, if you did not apply for a visa stamp at a U.S. consulate in Canada or Mexico, you can be readmitted to the U.S. with the following documents:

- If you hold F-1 status, you can use Form I-94, a Form I-20 ID and properly endorsed Form I-20 A-B.
- If you hold J-1 status, you can use your valid IAP-66 (copy 3) showing date of expiration of stay.
- If you hold another nonimmigrant status, such as H-1B, L-1, or O-1, and are departing the U.S. for less than 30 days and are only traveling to Mexico or Canada (not adjacent islands), you can use your unexpired Form I-94 (and your Form I-797 approval notice with new I-94, if applicable).

For more information on Automatic Revalidation, see <http://www.jackson-hertogs.com/?p=5663>.

Note that travelers entering the United States through certain air or seaports may not be issued a paper Form I-94 Arrival/Departure Record. The Form I-94 serves as evidence that a nonimmigrant has been lawfully admitted to the United States. Nonimmigrants who do not receive a paper Form I-94 card at the port of entry are advised to print a copy of their Form I-94 record from the US Customs and Border Protection (CBP) website, <https://i94.cbp.dhs.gov/i94>. You do not have to give up your printed I-94 record.

15. Are there any situations where, as a Third Country National (TCN), I am not allowed to apply for a visa at a border U.S. Consulate in Canada or Mexico?

Yes. You are not allowed to apply for a visa stamp as a TCN in the following circumstances:

You overstayed a “date certain” visa status: When you are admitted to the U.S. in certain statuses, such as F-1 or J-1, your I-94 card/record will be valid for “duration of status” or D/S (as indicated as the expiration date on the Form I-94); other visa statuses, such as B-1 and TN, are valid until a “date certain” (the Form I-94 will have the actual status expiration date). If you have ever overstayed a “date certain” status in the U.S. (i.e., you entered as a B-1 and

remained in the U.S. one day beyond the status expiration date specified by USCIBP on your I-94 card/record and had not filed a non-frivolous extension of stay before the expiration date), you are no longer eligible to obtain a nonimmigrant visa at a U.S. consulate in Canada/Mexico. You must instead apply for the visa stamp at a U.S. consulate in your country of nationality or permanent residency (barring extraordinary circumstances). In addition, if you have overstayed a "date certain" I-94 card/record, any existing valid visa stamps in your passport automatically become void. If you have overstayed your I-94 card/record, we recommend that you always return to your home country to apply for a visa stamp. If a foreign national applies for a nonimmigrant visa in Canada or Mexico, s/he must bring sufficient documentation to demonstrate maintenance of legal status in the United States for all previous periods spent in the United States. Please see note on bars to admission below.

You are or were in the U.S. as an F-1 student, but failed to maintain a full course of study: Nonimmigrants admitted as F-1 students are required to maintain a full-course of study while in the U.S. unless they have been issued an employment authorization document following the completion of the degree. If you have not maintained a full course of study and therefore have not maintained F-1 nonimmigrant status in the U.S., you cannot apply for a visa as a TCN in Canada or Mexico and must return to your home country to apply for the visa. In order to show maintenance of F-1 status, you must present transcripts and I-20 documents to show that you maintained a full course of study. These documents are required even if you have since been approved for a COS to H-1B, L-1, or O-1.

You are a national of certain countries: If you are a national of North Korea, Cuba, Syria, Sudan or Iran, you are not eligible to apply as a TNC visa applicant. Also, if you applied for a visa in your home country previously and were informed when you obtained the original visa that you are subject to National Security Entry Exit Registrations (NSEERs), you are not eligible to apply for a visa stamp as a TCN.

The following applicants are also not eligible to apply for visa stamps as a TCN at U.S. Consulates in Mexico (note that these individuals may apply as TCNs in Canada):

- Applicants who entered the U.S. with a visa issued in their home country and changed status with Department of Homeland Security in the U.S., who now seek a new visa in the new visa category.
- Applicants who entered the United States in one visa category and seek to re-enter the U.S. in a different visa category.
- Applicants who obtained their current visa in a country other than that of their legal residence.

16. Are there any situations where I am not admissible to the U.S.?

There are many reasons why someone may be inadmissible to the U.S. (i.e., criminal record, prior deportation, etc.). One of the most common ways to become inadmissible is by overstaying the period in which you were admitted to in the U.S.

If you have overstayed a "date certain" status by staying in the U.S. beyond the expiration date on your I-94 card/record, and therefore have been "unlawfully present" in the U.S., there may be severe consequences. If you are unlawfully present in the U.S. for over 180 days, but less than one year, and then depart the U.S., you are subject to a **3-year bar** against admission.

If you are unlawfully present in the U.S. for one year or more, and then depart the U.S., you are subject to a **10-year bar** against admission.

Unlawfully present refers to staying beyond the expiration date of the Form I-94 card/record that is issued to you by USCIBP when you enter the U.S. or by USCIS when you file a COS or EOS petition.

If you discover that you have overstayed your I-94 by more than 180 days, DO NOT depart the U.S. -- you must contact our office immediately.

17. Do I need to make an appointment to visit a U.S. Consulate?

Yes, all U.S. consulates around the world require you to make an appointment. For average wait times to make an appointment at U.S. consulates around the world, see <http://travel.state.gov/content/visas/english/general/wait-times.html>. During peak travel periods, it can take weeks, or even months, just to get an appointment to apply for a visa stamp so you should plan accordingly. You should also check the website of the U.S. consulate that you plan to visit for details on how to obtain an appointment as most U.S. consulates have unique appointment procedures.

18. Do I need a visa to visit Canada or Mexico?

Citizens of many countries are required to obtain a visa to visit Canada or Mexico. If this applies to you, you must arrange for a visa to the country you will be visiting before you can enter that country to apply for a U.S. visa stamp.