

## 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 and certain “Landed Immigrants” of Canada, who are visa exempt, need a visa stamp in their passport to enter the U.S. to work. Dependents (i.e., spouse, children) 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 and Landed Immigrants, <http://www.jackson-hertogs.com/jh/faq/10-508.pdf>. 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 J visas:** 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/travel/travel.shtml>, 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.

**Cable Notification:** When the petition is approved, USCIS forwards cable notification of the approval to the U.S. Consulate indicated on the petition. 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 do U.S. consulates require when applying for a visa stamp?

U.S. consulates will generally 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/jh/misc/10-602.pdf>);
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](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.
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](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 of \$131 machine readable visa fee; additional fees vary by nationality; see the Visa Reciprocity schedule, [http://travel.state.gov/visa/fees/fees\\_3272.html](http://travel.state.gov/visa/fees/fees_3272.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/travel/usemb.shtml>.

**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.

- 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.

### 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](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 or your “I-94 card” is an entry card issued to you upon entry to the U.S. by the U.S. Customs and Border Protection (USCBP) inspectors. 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 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.

### 13. 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.

### 14. 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/JH/memos/80-012.pdf>.

### 15. 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/jh/faq/10-510.pdf>.

## 16. 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 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 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, any existing valid visa stamps in your passport automatically become void. If you have overstayed your I-94 card, 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.

## 17. 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, 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 that is issued to you by either USCBP 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.**

### 18. 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/visa/temp/wait/tempvisitors\\_wait.php](http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php). 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.

TCN applicants wishing to make an appointment at a U.S. Consulate in Canada or Mexico should follow these instructions:

**Appointments by Telephone:** If you are in the United States and you wish to schedule an appointment, you should call 1-900-443-3131; in Canada you should call 1-900-451-2778. Callers from the United States or Canada wishing 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 push-button rotary phone will not work.

**Appointments by Internet:** Applicants can book appointments in Canada via the Internet at <http://amcits.com/nvars.asp>. Each appointment costs \$9.50 Canadian, which will be charged to a major credit card. Applicants are advised to have their credit card information handy. Appointments for Mexico cannot be booked online at this time.

After your appointment is scheduled, you will be mailed an information packet for the post where you will be applying. Do not call an individual post directly to request an appointment. Appointment at U.S. consulates in Canada and Mexico can only be scheduled by calling the appropriate 1-900 or 1-888 telephone number or by using the Internet.

### 19. 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.

Information about Canadian visitor visas can be found at: <http://www.cic.gc.ca/english/visit/apply-how.asp>.

Information about Mexican visas can be found at: <http://www.mexonline.com/consulate.htm>.