

International Travel Requirements and Advisories

It is important that any foreign national wishing to travel internationally plan ahead to ensure they have the required documents for re-admission to the United States.

Please review the requirements below, which are separated based on the U.S. immigration status of the traveler. **Advisory:** This is general information. Anyone with specific questions or concerns should contact their attorney, in advance of departure from the U.S., and in advance of purchasing non-refundable tickets.

I. NONIMMIGRANTS (WITH NO I-485 FILED)

Canadian nonimmigrants

Canadian citizens in most nonimmigrant statuses (for example B, H, L, O, TN) do not need a valid visa stamp in order to travel internationally. These individuals can travel with:

1. Valid Canadian passport; **and**
2. Original I-797 approval notice evidencing nonimmigrant status, if applicable. (Individuals in B, TN, O-3, blanket L, and H-4 or L-2 status may not have an approval notice).

Note that the visa stamp exemption only applies to Canadian citizens. Canadian landed immigrants (Canada's equivalent to the green card) must obtain visa stamps.

I-94 Card/H-1B Maintenance of Status

When you enter the United States following international travel, you may be issued an I-94 card (Arrival/Departure Record) which should be stapled to your passport.

In many cases a Canadian citizen may be issued a "multiple entry" I-94 card which may be re-used for travel between the U.S., Canada and Mexico provided that each trip outside of the U.S. is only to Canada or Mexico and for a period of less than 30 days.

The I-94 card will reflect your nonimmigrant classification and the period of admission to the United States. Each time you reenter the U.S. following international travel, you may be issued a new I-94 card. We ask that you check the expiration date of the I-94 card and the visa classification upon each entry to make sure that you were admitted correctly. ***Regardless of the end date of the nonimmigrant H-1B petition as noted on the Form I-797 (Approval Notice), the expiration date on the most recent Form I-94 marks the end of your lawful admission to the United States.***

Note that the end date on the I-94 may be limited to the expiration date of your passport, so you should make an effort to keep your passport valid for as long a period as possible. Again, we recommend that you verify the expiration date on the I-94 card upon each entry into the United States and contact us immediately if the expiration date does not coincide with the expiration date on the Form I-797 (Approval Notice).



Page Two

Nonimmigrants of other nationalities

All nationalities (other than Canadians) require the following documents:

1. Valid passport;
2. Valid original I-797 approval notice evidencing nonimmigrant status, if applicable. (Individuals in B, TN, O-3, blanket L, and H-4 or L-2 status may not have an approval notice); and
3. Valid visa stamp in the same category as their current status¹.

Exception: There is an exception to the visa stamp requirement for some trips to Canada or Mexico of less than 30 days. **If you would like to travel under this provision, please contact an attorney prior to departure from the U.S. to ensure you are eligible to re-enter the U.S. without a valid visa stamp.**

I-94 Card/H-1B Maintenance of Status

When you enter the United States following international travel, you may be issued an I-94 card (Arrival/Departure Record) which should be stapled to your passport. The I-94 card will reflect your nonimmigrant classification and the period of admission to the United States.

Each time you reenter the U.S. following international travel, you may be issued a new I-94 card. We ask that you check the expiration date of the I-94 card and the visa classification upon each entry to make sure that you were admitted correctly. ***Regardless of the end date of the nonimmigrant H-1B petition as noted on the Form I-797 (Approval Notice), the expiration date on the most recent Form I-94 marks the end of your lawful admission to the United States.***

Note that the end date on the I-94 may be limited to the expiration date of your passport, so you should make an effort to keep your passport valid for as long a period as possible. Again, we recommend that you verify the expiration date on the I-94 card upon each entry into the United States and contact us immediately if the expiration date does not coincide with the expiration date on the Form I-797 (Approval Notice).

How to obtain a visa stamp

There is no way to obtain a visa stamp from within the U.S. The option of visa revalidation within the U.S. was discontinued several years ago. Visa stamps must now be obtained at one of the U.S. Embassies or Consulates abroad.

Generally, the following documents are required in order to obtain a new visa stamp from a U.S. Consulate abroad:

1. Valid passport (with at least 6 months of validity left);
2. Original H-1B/ L-1/ TN-2 (Mexican)/ O-1 approval notice;

¹ Please note that for H, L, O, or P nonimmigrant visa stamps, the current USCIS and Department of State policy is that the visa stamp remains valid until it expires or is cancelled by an immigration or consular officer, ***regardless of a change in the foreign national's employer.*** As long as the foreign national remains in the same nonimmigrant classification, the visa stamp is considered to be valid until the date of its expiration.

Although the above policy may also apply to Mexican TN-2 visa stamps, such individuals are strongly encouraged to obtain new TN visa stamps that reflect the current employer.

Page Three

3. Copy of the H-1B/ L-1/ TN-2 (Mexican) / O-1 petition;
4. Form DS-156 or DS-160 Nonimmigrant Visa Application Form, with photo²;
5. Form DS-157 Supplemental Form (for men between the ages of 16 and 45; many posts require it from all applicants) (not needed if DS-160 is required by the U.S. consular post);
6. Machine readable visa issuance fee. Fee varies based on visa type. See http://travel.state.gov/visa/fees/fees_1341.html;
7. For some nationalities, an additional reciprocity fee may be required (http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html); and
8. For some visa applicants (i.e. H-1B, TN (Mexican), and blanket L-1B), an original university degree and/or transcripts are usually required as well.

The spouse and/or children of the principal applicant may obtain a dependent visa upon presentation of the above documents and proof of relationship to the principal applicant (original marriage or birth certificate).

The individual should have the original H-1B, L-1, O-1 or TN (Mexican) approval notice, as well as the copy of the petition, which we forward to the individual or employer at the time of approval. The DS-156 and DS-157 forms are available on the Consulates' websites.

Although not always required, we also recommend that the applicant bring his/her original university degree, as well as a couple recent pay stubs or a letter from Human Resources, confirming the individual remains employed with the petitioning company.

The above are the documents generally required. However, it is very important to check the website of the Consulate at which the individual will be applying, as some Consulates require additional information. See <http://usembassy.state.gov> for processes and procedures at all U.S. Consulates worldwide.

Advisories:

- Many Consulates are now scheduling appointments several weeks out, and the delays increase as the holidays approach. Thus, it is important to schedule appointments **well in advance** of any travel. See http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php for current wait times at each consular post.
- Due to increased security checks, the time between visa application and visa issuance has increased, in some cases significantly. It is important to schedule enough time abroad to allow for the visa issuance. See http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php for current processing times from interview to visa issuance.

² Note that some consular posts have implemented and require the use of the form DS-160 Nonimmigrant Visa Electronic Application in lieu of the DS-156 and DS-157 forms. You may find the list of consular posts using the DS-160 on the U.S. State Department's website located at http://travel.state.gov/visa/frvi/forms/forms_4230.html. The DS-160 may be accessed at <https://ceac.state.gov/genniv/>. Please review the specific instructions for the consular post at which you will be applying to determine which form is required.

Page Four

- If the individual applies for a visa and visa issuance is delayed for any reason (most commonly due to security checks), unless the applicant's old visa is still valid, they may not return to the U.S. (for example, in visitor status) until the new visa is issued.
- Most individuals can apply for a nonimmigrant visa at any U.S. Embassy or Consulate in the world, although the Consulate retains discretion to restrict applications from out-of-jurisdiction applicants. It is generally best for the individual to apply in their home country, where the consular officer can more easily verify information if necessary.
- **PIMS: Delays Expected in H, L, O, P, and Q Visa Issuance at U.S. Consular Posts** - Non-immigrant visa (NIV) eligibility in the H, L, O, P, and Q categories is based on an approved Form I-129, Petition for Alien Worker and a Form I-797, Notice of Action/ Approval issued by United States Citizenship and Immigration Services (USCIS).

In order to issue a visa stamp in the corresponding category, U.S. consular posts must verify the approval of the petition. A system of verifying approved nonimmigrant visa petitions in the H, L, O, P, and Q categories has been implemented as the primary source of approval verification by consular posts when issuing visa stamps. Having a copy of Forms I-129 and I-797 Approval Notice will be sufficient for making a visa appointment. However, the consulate will not be able to issue a visa stamp until verification is available through the system, called PIMS.

- Consular posts are able to access the details of approved nonimmigrant visa petitions in a report called "PIMS" (Petition Information Management Service). Under this system, the Service Centers mail and fax information to the Kentucky Consular Center (KCC), which then data enters and scans the material into PIMS, creating an electronic record with information on a petitioner, petition, and/or beneficiary. The PIMS Petition Report contains information on all petitioners recorded by the KCC as having approved petitions since 2004. In addition, many of the records contain information from KCC's Fraud Prevention Unit. Each new, approved petition is linked to a base petitioner record, allowing centralized tracking of NIV petitioner and petition information.
- If the post can locate information on a particular NIV petition on PIMS, then the visa could be issued within 24 hours (1 working day). However, if the post cannot immediately locate the information, it will send a request to KCC to research the approval of the petition. KCC will attempt to complete processing of inquiries from posts within 1 working day. However, many cases will require more time. Thus, applicants must plan accordingly and be prepared for a possible delay of several days in obtaining a visa stamp.
- Third country nationals requiring a visa to enter the country in which the consular post is located should obtain a visa allowing them to remain in that country for several days in the event of delays in visa issuance. Emergency situations will be handled on a case-by-case basis.

Advisories regarding applying in Canada or Mexico:

- Citizens of Iran, Sudan, Syria, North Korea and Cuba are not eligible to apply for a visa in Canada or Mexico.
- Third country nationals (non-Mexican, non-American or non-Canadian citizens) who may be subject to a heightened security check (due to nationality, education/employment profile, or prior interaction with law enforcement) are strongly advised not to apply in Canada or Mexico, where they will be stuck if visa issuance is delayed.

Page Five

- Many U.S. consular posts in Mexico and Canada restrict which third country nationals may apply at their posts (see additional information below). It is very important to review the restrictions listed on the websites prior to departing the U.S. For example, specific information on visa processing in Tijuana is available at <http://tijuana.usconsulate.gov/niv.html>. Specific information on visa processing in Vancouver is available at <http://vancouver.usconsulate.gov/content/content.asp?section=visas&document=index>.
- ***Since October 28, 2008, the U.S. consular posts in Mexico no longer accept change of status cases; they will only accept applications from those seeking renewal of a visa in a previously approved category, except B-1/B-2.*** [For example, an Indian national who previously received an H-1B visa in his/her home country could apply for a new H-1B visa in Mexico. However, an Indian national who previously received an F-1 visa in his/her home country and changed status to H-1B in the U.S. could not now apply for an H-1B visa in Mexico.] **The posts in Mexico will honor any change of status appointments that were scheduled prior to this change coming into effect.**
- Applicants who **cannot apply in Mexico** include the following:
 - i. Applicants for B-1/B-2 visas, including renewals are not accepted from third country nationals who are not resident in Mexico.
 - ii. 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 seek a new visa in the new visa category.
 - iii. Applicants who entered the United States in one visa category and are seeking to re-enter the U.S. in a different visa category.
 - iv. Applicants who have been out of status in the U.S. having violated the terms of their visas or having overstayed the validity indicated on their I-94s.
 - v. Applicants who entered the U.S. under the auspices of the Visa Waiver Program.
 - vi. Applicants who obtained their current visa in a country other than that of their legal residence. Except that Third Country National Applicants residing in the United States, seeking to renew their visa in any category except B-1/B-2 (tourist/business), may apply for the renewal of their visa stamp if the current visa stamp was issued in the Applicant's country of nationality, former residence, or in Mexico.
- Both Mexico and Canada require entry visas for many nationalities. The applicant should contact a Canadian or Mexican Embassy in the United States to determine if this requirement applies to them.

To schedule an appointment at one of the U.S. Consulates in Canada, please visit http://www.usvisa-info.com/en-CA/selfservice/ss_country_welcome. As of September 1, 2010, the U.S. Mission in Canada transitioned to a new appointment service for visa applicants and is no longer charging a fee for scheduling an appointment, however applicants must pay the visa application fee (MRV fee) prior to scheduling the appointment. For appointments in Mexico, see www.usvisa-mexico.com. Note that appointment scheduling fees apply.

Page Six

Note that individuals subject to NSEERS (National Security Entry and Exit Registration System) must depart the U.S. through a designated port of departure.

II. INDIVIDUALS AT THE LAST STAGE OF THE GREEN CARD PROCESS, WHO HAVE FILED AN I-485 APPLICATION FOR ADJUSTMENT OF STATUS

For individuals in H or L status, there are travel restrictions **only** for those who have filed an I-485. Individuals in H or L status who are in the earlier stages of the green card process (labor certification or immigrant visa petition), or those who elected to proceed with consular processing of the immigrant visa, have no special travel restriction. These individuals travel in the usual manner with their nonimmigrant documents.

Individuals in other nonimmigrant statuses (for example, B, F, J, TN) may be travel restricted earlier in the green card process. If they have not already done so, these individuals should discuss international travel with an attorney.

Adjustment of status (I-485) applicants who are maintaining H or L status

Generally, an applicant for adjustment of status must have a valid passport and advance parole document prior to departure from the U.S. Failure to travel with an advance parole will result in the automatic abandonment of the adjustment application.

However, there is an **exception to the advance parole requirement for those maintaining H or L status** (H-1B, H-4, L-1A, L-1B, L-2). Individuals who:

1. Are maintaining H or L status prior to departure from the U.S.;
2. Will resume employment with the same H or L employer;
3. Are in possession of a valid H or L approval notice; and
4. Are in possession of a valid nonimmigrant visa (if required).

Do **not** need an advance parole document in order to travel.**

****CAVEAT: Pursuant to current U.S. immigration policy, if the Principal Applicant (H-1B, L-1A or L-1B) reenters the U.S. pursuant to a valid Advance Parole document, he/she will be paroled into the U.S. Any dependent family members with pending adjustment applications who had been maintaining H-4 or L-2 status will not be permitted to reenter the U.S. with a valid H-4 or L-2 visa stamp following travel outside of the U.S. Such dependent family members will be required to present valid Advance Parole documents in order to reenter the U.S. following travel abroad.**

However, please note that Principal Applicant's entry to the U.S. pursuant to a valid Advance Parole document does not prevent the Principal Applicant from resuming employment pursuant to H-1B or L-1 status or obtaining an extension of such status.

If the Principal Applicant and dependents later obtain extensions of H or L status (provided they maintained valid H or L status), the Principal Applicant and dependents may apply for H or L visa stamps the next time that they travel abroad and then reenter the U.S. pursuant to the valid H or L visa stamp.

Page Seven

If a dependent enters the U.S. pursuant to an Advance Parole document, such entry as a parolee does not affect the Principal Applicant's ability to enter the U.S. pursuant to an H or L visa stamp provided that the Principal Applicant has maintained valid H or L status.

All of the above also applies to visa exempt Canadians but in lieu of a visa stamp, they would need a valid I-797 Approval Notice.

In short, the above individuals have two options for travel documentation:

Option 1: Travel with a valid passport and valid advance parole document; **or**

Option 2: Travel with a valid passport, valid nonimmigrant visa, valid original nonimmigrant petition approval notice (Form I-797), and original I-485 receipt notice (**See Caveat above**).

Regulatory Change effective 11/1/07: USCIS published an amendment to the regulations which states that possession of the original I-485 receipt notice is no longer required. USCIS recognized that there are often delays in issuance of the receipts; that the individual's status can be verified electronically; and that the receipt notice requirement created an unnecessary burden on the traveler. Therefore, the USCIS removed this requirement from the regulations, effective November 1, 2007.

Advisory: If an individual in H or L status uses an Employment Authorization Document (EAD) to work, they will violate their H or L status, and will be required to have an advance parole document in order to travel. Mere possession of the EAD does not trigger this requirement; only use of the EAD to work will impact the individual's H or L status.

Advisory: Under current policy, if an AOS applicant uses an Advance Parole to re-enter the U.S., he/she may continue employment pursuant to his/her H or L status as long as the individual has continuously maintained nonimmigrant status. However, the employee may wish to seek an Employment Authorization Document (EAD) to safeguard his/her ability to work legally in the U.S. if there is a sudden change in U.S. immigration policy.

Advisory: Please note that an adjustment applicant must still be physically present in the United States at the time USCIS receives their I-485 application. Therefore, although the individual need not wait for the official receipt notice prior to departing the U.S., they must still wait until USCIS actually receives the I-485 application. LMAC e-mails the applicant when the I-485 is filed with USCIS. The application is filed via FedEx, so the receipt date at USCIS will be the business day following our e-mail.

Impact on work authorization if an adjustment applicant in valid H or L nonimmigrant status uses an advance parole to re-enter the U.S:

If an adjustment applicant in H or L status chooses to travel using Option 1 (uses an Advance Parole to re-enter the U.S.), the individual may continue employment pursuant to his/her H or L status as long as the individual has continuously maintained nonimmigrant status. Therefore, if an individual currently in valid H-1B, H-4, L-1 or L-2 status travels internationally, the individual can re-enter the U.S. with an advance parole and continue to work pursuant to valid H or L nonimmigrant status. The individual is not required to have an H or L visa when re-entering the U.S. if he/she has an advance parole.

Page Eight

Adjustment of status (I-485) applicants in nonimmigrant statuses other than H or L (for example, TN, E, O)

These individuals MUST have a valid advance parole document prior to departure. International travel without this document will result in the automatic abandonment of the pending adjustment of status application.

In addition, **EXCEPT for those in H or L status, if the individual is re-admitted using an advance parole, they must use an EAD to work;** they may no longer work pursuant to the nonimmigrant status they held prior to departure.

Updated 09/14/2010