FAQs for Individuals in H-1B Nonimmigrant Status

The following information addresses common questions by individuals in H-1B nonimmigrant status, particularly related to applying for lawful permanent resident (LPR) status, job changes or terminations, international travel, and dependent family members.

For example, did you know:

- An eligible H-1B worker can change employers as soon as the new employer's nonfrivolous H-1B petition is properly filed with USCIS.
- We will not revoke a Form I-140 petition approval solely due to the termination of the petitioner's business or the employer's withdrawal, as long as the petition has been approved for at least 180 days or the associated adjustment of status application has been pending for at least 180 days, and the petition approval is not revoked on other grounds. In this scenario, the H-1B worker will retain their priority date.
- When an H-1B worker's employment is terminated (either voluntarily or involuntarily), they typically may take one of several actions to remain in a period of authorized stay in the United States beyond 60 days.

The chart below summarizes some common scenarios for H-1B workers. The information in this chart is general and does not capture all relevant details or considerations. Please review the FAQs further below and accompanying links for more specific information.

Scenarios for H-1B Workers

Scenario	Duration of Status or Authorized Stay	Employment (worker)	Employment (spouse)	Travel	Change of status
No pending or approved Form I-140 or labor certification	H-1B status valid up to 3 years and extendable up to another 3 years, for total period of admission of 6 years	Tied to Form I-129 petitioner, but transferrable to new petitioner with a new nonfrivolous petition filing	Not authorized to work as an H-4 dependent	Travel and return using H-1B documents	May request to change to another nonimmigrant status while within the United States

Scenario	Duration of Status or Authorized Stay	Employment (worker)	Employment (spouse)	Travel	Change of status
Form I-140 or labor certification filed at least 365 days before requested H-1B extension start date	H-1B status renewable beyond end of 6-year general period of admission limitation, in 1-year increments	Tied to Form I-129 petitioner, but transferrable to new petitioner with a new nonfrivolous petition filing	Eligible for Employment Authorization Document (EAD), if the principal worker's H-1B status has extended beyond 6 years, or if Form I-140 is approved	Travel and return using H-1B documents **or** using Advance Parole if Form I-485 is pending and associated Form I-131 has been approved and remains valid	May request to change to another nonimmigrant status while within the United States
Approved Form I-140, but an immigrant visa number is not available	Status renewable beyond end of 6-year general period of admission limitation, in 3-year increments	Tied to Form I-129 petitioner, but transferrable to new petitioner with a new petition filing	Eligible for EAD	Travel and return using H-1B documents **or** using Advance Parole if Form I-485 is pending and associated Form I-131 has been approved and remains valid	May request to change to another nonimmigrant status while within the United States

Scenario	Duration of Status or Authorized Stay	Employment (worker)	Employment (spouse)	Travel	Change of status
Approved Form I-140, with an immigrant visa number available	Not a basis to renew H-1B beyond 6 years in 3-year increments, but may be eligible for extensions in 1-year increments if at least 365 days have passed since filing of Form I-140 or labor certification application	Tied to Form I-129 petitioner, but transferrable to new petitioner with a new petition filing	Eligible for EAD	Travel and return using H-1B documents **or** using Advance Parole if Form I-485 is pending and associated Form I-131 has been approved and remains valid	May request to change to another nonimmigrant status while within the United States
Timely-filed nonfrivolous pending change of status	Generally provides a period of authorized stay while pending, even after expiration of H-1B status	Not authorized to work beyond H-1B status end-date, until the change of status is approved	If an EAD holder based on being an H-4 spouse, not authorized to work beyond H-4 status end-date	Not a basis for admission to the United States. Departure while a change of status request is pending leads to denial of change of status	Must have change of status petition or application approved before change of status takes effect

Scenario	Duration of Status or Authorized Stay	Employment (worker)	Employment (spouse)	Travel	Change of status
Pending Compelling Circumstances EAD (CCEAD) application	Generally provides a period of authorized stay while pending, even after expiration of H-1B status	Not authorized to work beyond H-1B status end-date until the CCEAD is approved	If an EAD holder based on being an H-4 spouse, not authorized to work beyond H-1B status end-date unless H-4 obtains their own CCEAD	Not a basis for admission to the United States. Must have another basis for admission	Must consular process abroad to obtain a new nonimmigrant status
Approved CCEAD	Period of authorized stay, renewable in 1-year increments	Authorized to work for any employer	May request CCEAD as a derivative of principal CCEAD applicant	Not a basis for admission to the United States. Must have another basis for admission	Must consular process abroad to obtain a new nonimmigrant status
Pending Form I-485 with EAD and Advance Parole	Period of authorized stay until Form I-485 adjudicated, even after H-1B status expires	Authorized to work for any employer, based on approved and unexpired EAD	Eligible for EAD if also filed a Form I-485 that remains pending	May use valid H-1B visa or valid Advance Parole Document associated with the pending Form I-485 to enter the U.S.	May request to change status within the United States if maintaining underlying nonimmigrant status

Scenario	Duration of Status or Authorized Stay	Employment (worker)	Employment (spouse)	Travel	Change of status
Approved Form I-485 (LPR)	Permanent status	Authorized to work for any employer	Authorized to work for any employer if the spouse of the principal applicant has also obtained LPR status	Unrestricted travel, but prolonged time outside of the United States, depending on the length and circumstances of the trip, may result in a determination that LPR status has been abandoned	N/A

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Acquiring H-1B Status from Within the United States

Q. I am currently in the United States in another nonimmigrant status. Do I have to depart the United States to obtain H-1B nonimmigrant status?

A. Nonimmigrants in the United States who wish to obtain a different nonimmigrant status generally either apply for a change of status with USCIS or, after USCIS approves their benefit request, consular process by applying for a visa in the new classification at a U.S. Embassy or Consulate abroad and then requesting admission to the United States in the new classification.

In general, you may change to H-1B nonimmigrant status without departing the United States. An employer who files an H-1B petition on your behalf can request a change of status on the Form I-129, Petition for a Nonimmigrant Worker. To be eligible to change your status, you must have been lawfully admitted to the United States as a nonimmigrant, your nonimmigrant status must remain valid, you must not have violated the conditions of your status, and you must not have committed any act that would make you ineligible to receive a nonimmigrant benefit. Also, certain nonimmigrant categories are ineligible for a change of status (see Change My Nonimmigrant Status for a list).

If you need to depart the United States – for example, if your current nonimmigrant status expires before your employer is able to file Form I-129 requesting a change of status to H-1B classification – you would generally need to apply for and obtain an H-1B visa stamp from a U.S. Embassy or Consulate abroad and present yourself at a port of entry for admission in H-1B status with U.S. Customs and Border Protection

(CBP) after the approval of the H-1B petition filed on your behalf. See *Requirements to Timely File a Request to Extend Stay or Change Status* in the USCIS Policy Manual.

H-1B Admission Duration

Q. How long may I remain in the United States in H-1B status?

A. The maximum period of admission for H-1B workers is generally 6 years. However, as detailed below, there are some common exceptions to this limit.

Q. When and how long can I extend my H-1B status beyond 6 years?

A. Your employer may submit Form I-129, Petition for a Nonimmigrant Worker, on your behalf, requesting an H-1B extension beyond 6 years in certain scenarios. For example, your employer may request to extend your H-1B status beyond 6 years if at least 365 days have passed since a permanent labor certification was filed on your behalf with the U.S. Department of Labor (DOL) or since an immigrant visa petition (typically Form I-140), enabling you to apply for lawful permanent residence once a visa is available, was filed on your behalf with USCIS under one of the employment-based immigrant visa categories. We may grant extensions on this basis in up to 1-year increments.

More commonly, your employer may also request to extend H-1B status beyond 6 years if you are the beneficiary of an *approved* Form I-140, Immigrant Petition for Alien Workers, in the first, second, or third preference category and are eligible to be granted lawful permanent resident status, except for the fact that an immigrant visa is not available, as reflected in the U.S. Department of State Visa Bulletin. Your petitioning employer must demonstrate that the visa is not available as of the date the H-1B extension petition is filed with USCIS, **a**s determined by your Form I-140 priority date and the relevant visa bulletin chart from the time of filing the H-1B extension request. See the USCIS Policy Manual for additional information on visa availability. We may grant extensions on this basis in up to 3-year increments.

Additional information about extending H-1B status beyond 6 years, including specific requirements and points at which you are no longer eligible for such extensions, is available on our H-1B Specialty Occupations page under “Period of Stay.”

Q. Must I presently hold H-1B status to request H-1B status beyond 6 years?

A. You do not have to hold H-1B status at the time you request H-1B status beyond the sixth year. Regulations authorizing H-1B status beyond 6 years apply to individuals who are currently in *or previously held* H-1B status.

For example, imagine you previously held H-1B status for 6 years but had no basis to timely extend beyond 6 years before your 6 years in H-1B status were reached. You then changed to O-1 status. While in O-1 status, a Form I-140 petition in the first, second, or third preference category was approved on your behalf, but an immigrant visa is not available in the category under which you are adjusting status based on your priority date. Your employer may then file a petition requesting a 3-year period of H-1B status on your behalf. This petition could either request a change of status to H-1B while still in the United States, assuming you are otherwise eligible for a change of status, or consular notification. H-1B petitions approved by USCIS for consular processing are forwarded to the Department of State for review. After review, a U.S. Consulate or Embassy may issue a visa for travel to a United States’ port of entry.

Q. Does my time outside of the United States count towards my 6-year maximum in H-1B status?

A. Only time spent in the United States as an H-1B beneficiary counts towards the 6-year maximum. Time spent outside the United States exceeding 24 hours, commonly referred to as "recapture time" or "remainder time," does not count towards your 6-year limit, and you are eligible to recapture those periods of time. The burden is on your petitioning employer to request and establish eligibility for recapture time. Documentation of time outside of the United States may include passport stamps, Form I-94 Arrival/Departure Records and travel history from U.S. Customs and Border Protection, airline tickets, and boarding passes, along with an accompanying chart indicating dates outside of the United States. Your petitioning employer may include such documentation to establish your eligibility for recapturing time when they submit an H-1B petition on your behalf.

Q. I only work in H-1B status for short periods of time throughout the year. Does the 6-year maximum duration still apply to me?

There is not a limitation of stay if your employment in the United States is seasonal or intermittent or for a total of 6 months or less per year, or if you do not reside continually in the United States. Your petitioning employer must provide clear and convincing proof that you qualify for such an exception of the 6-year maximum duration. This proof must consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

Q. When can I begin a new 6-year period of H-1B status?

A. You may be eligible to begin a new period of 6 years in H-1B status if you have been outside of the United States for 1 continuous year, with the exception of brief trips to the United States for business or pleasure. If you start a new 6-year period of H-1B status you are subject to H-1B cap limitations if your employment is cap-subject.

Expiration of H-1B Status

Q. My H-1B status is about to expire. Do I have to leave the United States to extend my H-1B status?

A. In general, you do not have to leave the United States to extend your H-1B status. Your employer can submit an H-1B petition with a request to extend your H-1B status. To be eligible to extend your status, you must have been lawfully admitted to the United States as a nonimmigrant, your nonimmigrant status must remain valid, you must not have violated the conditions of your status, and you must not have committed any act that would make you ineligible to receive a nonimmigrant benefit. See How Do I Extend My Nonimmigrant Stay in the United States?

If the H-1B petition requesting an extension of status on your behalf is filed *after* the end of your H-1B status period – in other words, if it was not "timely filed" -- then we, in our discretion and under certain conditions, may excuse the failure to timely file if the delay was due to extraordinary circumstances beyond your control. If we approve the late-filed petition to extend status, the approval is effective as of the date of the expiration of your prior H-1B admission period. See the USCIS Policy Manual.

If we deny the extension of status request, whether it was filed on time or not, you will be considered to have been out of valid status as of the expiration date of your H-1B status that you sought to extend (in other words, your I-94 expiration date). Please see the USCIS Policy Manual for more information.

Q. My H-1B status is about to expire but a petition requesting an H-1B extension on my behalf is pending at USCIS. What is my status once my H-1B expires? May I continue to work while the extension request is pending?

If your H-1B expires and a timely-filed non-frivolous H-1B extension request is pending on your behalf, you are in a period of authorized stay – even after your H-1B status expires. Note, however, that an authorized period of stay is not the same as a status. If the petition is seeking extension of the same employment for the same employer, you are authorized to continue employment for a period not to exceed 240 days from the date your H-1B status expired. If we deny the extension request before the 240-day period expires, your employment authorization will automatically terminate when USCIS notifies your petitioning employer of the denial. If the petition is requesting a change in employment or change in employer under H-1B portability, you are authorized to work in the new employment for the entire time the petition is pending at USCIS. If we deny the request, your employment authorization based on portability will automatically terminate when USCIS notifies your petitioning employer of the denial. See "Changing Employers or Employment Terms with the Same Employer (Portability)" in our H-1B Specialty Occupation webpage.

Q. What happens if my H-1B status expires while I have a pending application to change to another nonimmigrant status?

A. A pending application to change status (Form I-129, Petition for a Nonimmigrant Worker, or Form I-539, Application to Extend/Change Nonimmigrant Status) does not provide lawful immigration status. However, you may be in an authorized period of stay during the period when a timely filed nonfrivolous application to change status is pending with USCIS. If we approve your timely-filed application to change status, the start date for your new nonimmigrant status is effective on the date of approval. If there is a gap of time between the expiration date of your H-1B status and the start date of your new status, we consider you to have continued to maintain a lawful status as long as you timely filed the change of status (COS) application, we granted the request to change status, and you did not violate any terms and conditions of your H-1B status.

If your request to change status was not filed on time – in other words, if it was not filed before the end of your H-1B status -- then we, in our discretion and under certain conditions, may excuse the failure to timely file if the delay was due to extraordinary circumstances beyond your control. If we approve the late filed change of status application, the change of status takes effect on the approval date. In this scenario, we will consider you to have maintained lawful status during the excused period. See the USCIS Policy Manual.

If we deny the application to change status, whether it was filed on time or not, you will be considered to have been out of valid status as of the expiration date of your H-1B status (your I-94 expiration date).

Q. What happens if my H-1B status expires and I have an approved compelling circumstances Employment Authorization Document (EAD)?

A. If your H-1B status expires and you have a compelling circumstances EAD, you will be in a period of authorized stay, but you will no longer be maintaining a nonimmigrant status. You generally will not accrue unlawful presence in the United States while the EAD is valid or, if you filed a non-frivolous application for the EAD before the expiration of your H-1B status, while your application was pending.

If you are working in the United States under a compelling circumstances EAD and a nonimmigrant or immigrant petition is filed on your behalf, you would not be eligible to change status, extend status, or

adjust status to lawful permanent resident from within the United States. After the petition is approved, you would need to apply for a visa and/or admission from outside the United States to begin working in accordance with that petition.

See additional information at Employment Authorization in Compelling Circumstances.

Company Ownership

Q. I have a controlling interest in a company. Can this company qualify as my petitioning employer to sponsor my H-1B status?

A. A company in which you have a controlling interest – meaning, you own more than 50% or have majority voting rights in the company – may qualify as your employer and may petition for H-1B status on your behalf. In this scenario you would be both an owner of the petitioning employer and a beneficiary of the petition (a "beneficiary owner"). You must still be coming temporarily to the United States to perform services in a specialty occupation. As a beneficiary owner, you must perform specialty occupation duties a majority of the time and may otherwise perform non-specialty occupation duties that are directly related to owning and directing your company, along with some incidental duties. The validity periods for the initial petition and first extension of such petition for beneficiary owners are limited to 18 months each. Additionally, Department of Labor requirements related to Labor Condition Applications, including requirements concerning the appropriate prevailing wage, still apply.

See the final rule, *Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, published on Dec. 18, 2024, which clarifies how the H-1B regulations apply to beneficiary owners.

The United States remains a destination for top talent around the world. Our ability to attract and retain entrepreneurs is essential for spurring innovation, job creation, and new industries and opportunities for all Americans. We encourage entrepreneurs to use the H-1B program, or other appropriate pathways, to live and work in the United States. See Options for Alien Entrepreneurs to Work in the United States.

H-1B Status and Adjustment of Status

Q. I hold H-1B status and have a pending adjustment of status application. If my H-1B expires, will my adjustment of status application be denied?

A.A pending adjustment of status application does not provide lawful status or cure any violation of nonimmigrant visa status. If you file Form I-485 while you are in H-1B status, however, the expiration of that H-1B status while the Form I-485 is pending generally will not make you ineligible for adjustment of status, as long as you do not engage in unauthorized employment or otherwise become inadmissible. See the USCIS Policy Manual.

Q. I hold H-1B status and have a pending adjustment of status application. If my H-1B expires, may I continue to work and travel?

A. A pending Form I-485, Application to Register Permanent Residence or Adjust Status, does not automatically confer employment authorization and does not serve as a basis for readmission to the United States. However, you may submit applications for employment authorization and advance parole with your Form I-485. If you file Form I-765, Application for Employment Authorization, based on your pending Form I-485, and receive an Employment Authorization Document (EAD), you may use this EAD to work. EADs based on a pending adjustment of status application are unrestricted as to employment type and location. If you file Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records, and receive an Advance Parole Document based on your pending Form I-485, you may present your valid Advance Parole Document at a port of entry for reentry to the United States.

The validity period for your EAD will generally be 5 years. If you file both Form I-131 and Form I-765 and USCIS approves both applications, we will generally issue one document which serves as both your EAD and Advance Parole Document (known as a combination card, or combo card). The combo card will be an EAD with the notation "SERVES AS I-512 ADVANCE PAROLE." (See Information About Your Immigration Document.) If you do not file the Form I-131 and I-765 together, and/or if we cannot adjudicate both applications together, you will receive separate employment authorization and Advance Parole Documents. In this case, your EAD will indicate "NOT VALID FOR REENTRY TO U.S." and your Advance Parole Document will be issued separately.

Q. I am an foreign student on an F-1 visa, currently in a period of optional practical training (OPT). Do I need to obtain H-1B status for my employer to file an immigrant petition on my behalf?

A. As an F-1 student on OPT, you do not have to obtain H-1B status before an immigrant petition is filed on your behalf. In general, nonimmigrants are admitted for a specific temporary period of time and, at the time of admission or extension of stay, must intend to depart the United States at the expiration of their authorized period of admission or extension of stay. See the USCIS Policy Manual. To be eligible for F-1 classification, a student must intend to depart the United States after their temporary period of stay and have a foreign residence they do not intend to abandon. However, as a student you may be the beneficiary of a pending or approved immigrant petition and still be able to demonstrate an intent to depart. See the USCIS Policy Manual.

Q. I have an approved immigrant petition and am waiting for a visa number to be available. Why is there such a long wait for a visa number to be available to me?

A. Availability of immigrant visas is subject to statutory limits, and demand for these visas is generally much higher than the limits can accommodate. Statutory constraints on immigrant visa numbers can only be changed by Congress. See Employment-Based Adjustment of Status FAQs for additional information.

Q. I have now become a lawful permanent resident. Do any employment restrictions apply to me? What guidance is available?

A. As a lawful permanent resident you are authorized to work for any employer. You may use your Permanent Resident Card (Green Card) for readmission to the United States after travel abroad, though if you are outside of the country for a long duration – generally 1 year or more – you may need to apply for a reentry permit. Note that, depending on the length and circumstances of the trip abroad, the trip may lead to a determination that you have abandoned your lawful permanent resident status. (See the USCIS Policy Manual). Additional conditions and requirements apply to those granted conditional permanent

resident status, usually granted to those who applied for lawful permanent residence based on marriage or investment. See After We Grant Your Green Card for more detailed information and resources.

Changing or Leaving Your H-1B Employer

Q. What is "porting"?

A. There are two kinds of job portability, or "porting," available based on two different kinds of employer petitions:

***H-1B petition portability*:** Eligible H-1B nonimmigrants may begin working for a new employer as soon as the employer properly files a new H-1B petition (Form I-129) requesting to amend or extend H-1B status with USCIS, without waiting for the petition to be approved. More information about H-1B portability can be found on our H-1B Specialty Occupations page.

***Immigrant worker petition portability*:** A worker with an adjustment of status application (Form I-485) that has been pending for at least 180 days with an underlying valid immigrant visa petition (Form I-140) can transfer the underlying immigrant visa petition to a qualifying new offer of employment in the same or similar occupational classification with the same or a new employer. For example, if you move from a software developer position to an information systems manager position, this may be considered a same or similar occupation. More information about this kind of porting (sometimes known as "INA 204(j) portability") can be found in the USCIS Policy Manual.

If you seek to port to a new offer of employment under INA 204(j), you must submit Form I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), to document your new job offer and transfer your Form I-140 to the new job offer.

If the Form I-140 is in an employment-based immigrant visa category which does not require a job offer – namely, individuals seeking a national interest waiver of the job offer requirement or individuals seeking classification as a person of extraordinary ability – you do not need to request job portability under INA 204(j).

Eligibility for immigrant visa classifications and specific requirements are described in the USCIS Policy Manual and in the Employment-Based Adjustment of Status FAQs.

Q. How do I leave my current employer to start working for a new employer while remaining in H-1B status?

A. Under H-1B portability provisions, you may begin working for a new employer as soon as they properly file a non-frivolous H-1B petition on your behalf, or as of the requested start date on the petition, whichever is later. You are **not** required to wait for the new employer's H-1B petition to be approved before beginning to work for the new employer, assuming certain conditions are met. For more details about H-1B portability, see our H-1B Specialty Occupations page, under "Changing Employers or Employment Terms with the Same Employer (Portability)."

Q. What are my options if my H-1B employment is terminated?

A. When nonimmigrant workers are laid off, they may not be aware of their options and may, in some instances, wrongly assume that they have no option but to leave the country within 60 days.

If your employment is terminated, either voluntarily or involuntarily, you typically may take one of the following actions, if you are eligible, to remain in a period of authorized stay in the United States:

- File an application for a change of nonimmigrant status;
- File an application for adjustment of status;
- File an application for a compelling circumstances Employment Authorization Document; or
- Be the beneficiary of a nonfrivolous petition to change employer.

If one of these actions occurs within the up to 60-day grace period, your period of authorized stay in the United States can exceed 60 days, even if you lose your previous nonimmigrant status. If you take no action within the grace period, you and your dependents may then need to depart the United States within 60 days, or when your authorized validity period ends, whichever is shorter.

For more detailed information, see our page on Options for Nonimmigrant Workers Following Termination of Employment.

Q. My employer filed a Form I-140 immigrant worker petition on my behalf. What happens if I leave my job, or if my employer withdraws the Form I-140? Will I retain my priority date? Am I still eligible to adjust status?

A. First, let's assume that your priority date is not yet current (meaning it is not earlier than the applicable cutoff date in the Visa Bulletin).

Starting from the moment that the Form I-140 filed on your behalf is approved:

- Your priority date is generally locked in for use in subsequently filed Form I-140 petitions (also known as priority date retention). The only way you can lose your priority date is if the I-140 approval is revoked on certain grounds such as agency error, fraud, or willful misrepresentation of a material fact.
- If you are otherwise eligible for H-1B status, this I-140 approval may be the basis to extend your H-1B status beyond the general 6-year period of admission limitation, in up to 3-year increments.
- Your spouse, if in H-4 nonimmigrant status or seeking a change of status to H-4 nonimmigrant status, would be eligible to apply for an Employment Authorization Document.

Within 180 days of the Form I-140 approval, if your employer withdraws the I-140 petition approval that was filed on your behalf, USCIS is obligated to automatically revoke the I-140 approval. *You would not lose your priority date*, but you would need a new basis in order to extend your H-1B status beyond the general 6-year limitation and ultimately adjust status.

After the Form I-140 filed on your behalf has been approved for at least 180 days, however:

- Even if your employer withdraws the Form I-140 approval, USCIS would not revoke the I-140 approval for that reason alone. You would continue to have an approved I-140, and would continue to be eligible for H-1B extensions beyond the general 6-year limitation if you are otherwise eligible for H-1B status. USCIS would only revoke the I-140 approval on certain grounds such as agency

error, fraud, or misrepresentation of a material fact. You would, however, need a new basis on which to seek adjustment of status.

Next, let's assume that your priority date becomes current, you have an approved I-140, and you properly file Form I-485 (the application to adjust status).

- Once your Form I-485 has been *pending* for 180 days, you can "port" the offer of employment in the Form I-140 approval to a new job offer (same or different employer) as long as the new job offer is in a "same or similar" occupational classification when compared to the job offer in the Form I-140 petition. The new employer does not have to submit a new I-140 on your behalf, although you would need to file a "Supplement J" to request this job portability. (Technically, you can submit a Supplement J to port a *pending* I-140 even before it's approved, but this scenario is less common. See the relevant form instructions on when you must submit a Supplement J.)

Finally, let's consider one alternative scenario: More than 365 days have passed since the filing of a PERM labor certification application or a Form I-140 petition on your behalf:

- You are eligible to extend your H-1B status beyond the general 6-year limitation, in up to 1-year increments. (As described above, the 3-year increments are only possible with an *approved* I-140 and a priority date that is *not* current.) Thus, even if you are not eligible for the up to 3-year extension because your priority date is current, you may still be eligible for extensions in increments of up to 1 year if at least 365 days have passed since the filing of the PERM labor certification application or Form I-140 petition (or other employment-based immigrant petition, such as Form I-360) on your behalf.
- Your spouse, if in H-4 nonimmigrant status or seeking a change of status to H-4 nonimmigrant status, would be eligible to apply for an Employment Authorization Document if you have been granted an extension beyond the end of the general 6-year limitation on this basis.

Q. My employer filed a Form I-140 on my behalf, but I would now like to leave that employer and focus on my start-up company. Is it possible to "port" to self-employment and still adjust status?

A. If you are the beneficiary of an approved Form I-140 petition or a pending Form I-140 petition that is ultimately approved and you have an adjustment of status application (Form I-485) that has been pending for at least 180 days, you may be able to port the offer of employment on which your application was based to self-employment in the same or similar occupational classification by filing a request to port using Form I-485 Supplement J. The petition must be in the employment-based 1st, 2nd, or 3rd preference category.

To determine if the self-employment is in the same or similar occupational classification as the job listed on the petition, USCIS evaluates the totality of the circumstances and may consider and compare various factors and evidence relating to the jobs, including the U.S. Department of Labor occupational codes assigned to the respective jobs; job duties; job titles; the required skills and experience; the educational and training requirements; any licenses or certifications specifically required; the offered wage or salary; and any other material and credible evidence relevant to a determination of whether the new position is in the same or a similar occupational classification.

Your request to port should also contain sufficient evidence to confirm that your business and the new job offer are legitimate. If the submitted evidence is insufficient, or if the officer identifies indicators that

raise doubts about the legitimacy of the self-employment, the officer may request additional evidence from you.

In reviewing a request to port, USCIS considers whether the petition accurately represented the intended employment at the time both the petition and the adjustment application were filed. This means that, at the time the petition was filed and at the time the adjustment application was filed (if not filed concurrently), the original petitioner must have intended to employ you in a permanent position, and you must also have intended to undertake the employment upon adjustment.

See the USCIS Policy Manual for additional information on porting and considerations for the same or similar occupational classification analysis.

Q. I have an approved Form I-140 but I know I will be waiting a long time for an immigrant visa to become available. Do I need to be the beneficiary of a valid, approved Form I-140 for the whole time I'm waiting?

A. You are not required to be the beneficiary of a valid, approved Form I-140 for the entire time you are waiting for an immigrant visa to become available. Generally, your first approved Form I-140 establishes your priority date. You *do* need a valid Form I-140 once an immigrant visa becomes available and you file your Form I-485, but it does *not* need to be the same I-140 that you used to establish your priority date.

In other words, an H-1B worker could establish their priority date with an approved I-140 from Employer A, then use H-1B petition portability to work for a number of other employers who do *not* file an I-140, and ultimately apply to adjust status based on a second approved I-140 from Employer Z (or use the approved I-140 from Employer A to "port" to a same or similar job offer from Employer Z, if eligible).

Please see the previous Q&A for more details about these scenarios.

Q. I believe my employer has retaliated against me. What protections are available to me?

A. You have a right to be protected from retaliation regardless of your immigration status. Immigration law may provide certain protections to you as an H-1B worker if you report suspected fraud or abuse. Normally, H-1B workers are not eligible to extend or change their status if they have lost or failed to maintain their H-1B status. However, if they can demonstrate "extraordinary circumstances," we may use our discretion to excuse this requirement on a case-by-case basis. We may consider a situation to be an instance of "extraordinary circumstances" if you:

- apply to extend your H-1B status or change your nonimmigrant status,
- indicate that you faced retaliatory action from your employer because you reported a Labor Condition Application violation,
- provide credible documentary evidence of such a report and retaliation, and
- lost or failed to maintain your H-1B status.

For more details, see Combating Fraud and Abuse in the H-1B Visa Program.

For more general information on worker protections, visit Worker.gov.

For additional information about protection for alien workers who are involved in labor agency investigations, see DHS Support of the Enforcement of Labor and Employment Laws.

International Travel

Q. My employer filed an H-1B petition on my behalf, and it is pending at USCIS. If I travel internationally, will the H-1B petition be affected?

A. Only a beneficiary who is continuing to maintain nonimmigrant status may apply for a change of status. If you depart the United States while a petition requesting a change of status to H-1B is pending, we will consider the change of status request abandoned. If we approve the petition, the approval notice will be issued as a consular notification and will not confer H-1B status. In this scenario, you would generally need to apply for and obtain an H-1B visa stamp from a U.S. Embassy or Consulate abroad and present yourself for admission to U.S. Customs and Border Protection (CBP) to obtain H-1B status. See the U.S. Department of State website for information on the visa application process and the CBP website for information on travel to the United States.

You must be physically present in the United States at the time your employer files a petition requesting an extension of stay on your behalf. However, departure from the United States while an H-1B petition requesting an extension of stay is pending will generally not serve as a basis to deny the extension request. Your employer may request that USCIS send notification of the H-1B extension approval to the consular office abroad where you will apply for a visa.

Q. I am in the process of applying for lawful permanent resident status while holding H-1B status. Will international travel affect my adjustment of status application?

A. For most adjustment of status applicants, if you depart the United States with a pending Form I-485, Application to Register Permanent Residence or Adjust Status, without first obtaining an advance parole document, we will deny Form I-485 for abandonment. Exceptions to this rule exist for a narrow set of nonimmigrants, including those holding valid H-1B status. An individual in H-1B status who is not under exclusion, deportation, or removal proceedings may travel while Form I-485 is pending without first obtaining an advance parole document if:

- Upon returning to the United States they remain eligible for H-1B status;
- They are returning to the United States to resume employment with the same employer for which their H-1B is authorized; and
- They are in possession of a valid H-1B visa.

Alternatively, an individual in H-1B status who has a pending Form I-485 and who has been granted an Advance Parole Document based on an approved Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records may depart the United States without abandoning their Form I-485 application, so long as they depart and return during the advance parole document's validity period.

Q. I filed Form I-131 requesting advance parole and Form I-765 requesting employment authorization with my Form I-485. If I leave the United States before the advance parole and employment authorization are issued, will the applications be denied?

A. Departure from the United States generally will not on its own serve as a basis of denial of Form I-765, Application for Employment Authorization, or Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records.

You may be eligible for expedited processing of your applications. We consider expedited processing of Form I-131 if you have a pressing or critical need to travel for an unexpected event, such as the need to obtain medical treatment in a limited time or the death or grave illness of a family member or close friend. Expedited processing of a travel document may also be warranted if you have a pressing or critical need to travel outside the United States for a planned event, such as a work or professional commitment, academic commitment, or personal commitment, but processing times prevent USCIS from issuing the travel document by the planned date of departure. When the need to expedite issuance of a travel document is related to a planned event, we consider whether you timely filed the Form I-131 or timely responded to a request for evidence. A desire to travel solely for vacation generally does not meet the definition of a pressing or critical need to travel. See additional information in the USCIS Policy Manual and our webpage on Expedite Requests.

Q. I have an Employment Authorization Document (EAD) based on compelling circumstances and am no longer maintaining H-1B status. Can I travel outside the United States?

A. An EAD based on compelling circumstances does not serve as a travel document or otherwise provide eligibility for readmission into the United States. However, having an EAD based on compelling circumstances does not prevent you from applying for a nonimmigrant or immigrant visa at a consular post outside the United States to return to the United States, assuming you are otherwise eligible.

We consider an applicant with a valid EAD based on compelling circumstances to be in a period of authorized stay. In addition, we consider the time during which the EAD application was pending to be a period of authorized stay. Therefore, you generally do not accrue unlawful presence during the validity period of the EAD or during the time that a timely filed non-frivolous application is pending. Leaving the United States to apply for a nonimmigrant or immigrant visa at a consular post outside the United States while working using the compelling circumstances-based EAD will not trigger the unlawful presence grounds of inadmissibility, if you are not subject to those grounds of inadmissibility from other circumstances. See additional information at Employment Authorization in Compelling Circumstances.

Family Members of H-1B Workers

Q. Can my H-4 dependent family members work?

A. H-4 dependents are not automatically employment authorized on the basis of their nonimmigrant status. Only H-4 dependents who affirmatively apply for and receive employment authorization from USCIS are authorized to work, and only certain H-4s are eligible for employment authorization. H-4 spouses may file Form I-765, Application for Employment Authorization, if the H-1B worker is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Workers, or has been granted H-1B status beyond 6 years based on 365 days having passed since a labor certification was filed with the Department of Labor or an immigrant visa petition was filed with USCIS on the H-1B worker's behalf. See Employment Authorization for Certain H-4 Dependent Spouses.

Q. Are my H-4 dependent family members also subject to the 6-year maximum period of stay?

A. Dependent family members' time in H-4 status is generally limited to the duration of the H-1B worker's status. If an individual obtains H-1B extensions beyond 6 years, then their H-4 dependent family members are also eligible for extension of H-4 status for that same duration. Time spent in H-4 status does not count towards the 6-year maximum for H-1B status, so an individual who has spent 6 years in H-4 status my still obtain their own H-1B status for a period of 6 years.

Q. I am seeking lawful permanent resident status with my dependent family members, including my H-4 child. What happens when my H-4 child turns 21? Are they still eligible for LPR status?

A. Once your child turns 21 or gets married, they no longer meet the definition of a child under the Immigration and Nationality Act (INA) and therefore will no longer be eligible for H-4 status. At this point, to maintain nonimmigrant status your child would need to change to another nonimmigrant status – for example, F-1 or H-1B – for which they independently qualify.

Additionally, they may still be eligible to adjust status or apply for an immigrant visa under the Child Status Protection Act (CSPA), which protects certain beneficiaries from losing eligibility for adjustment of status and immigrant visas due to aging during the immigration process. If your child benefits from the CSPA, they will still lose their H-4 status after turning 21, but they will remain eligible to adjust status as a derivative beneficiary of your own adjustment of status application and immigrant worker petition despite being age 21 or over, assuming otherwise eligible. See the USCIS Policy Manual for detailed information about CSPA, as well as Employment-Based Adjustment of Status FAQs (Family Members).

Actions to Support H-1B Workers and Families

Q. What actions has USCIS taken to support H-1B nonimmigrants seeking to adjust or change status in the United States?

Congress sets the annual immigrant visa limits. Historically, demand for these visas, regardless of country of origin, is much higher than the annual limits can accommodate.

USCIS has taken several actions to help those who will be waiting a long time for an "immediately available" immigrant visa number, including a 2015 rule that allows certain spouses of H-1B nonimmigrants to apply for employment authorization, and a 2016 rule that has improved job flexibility for H-1B workers and their families.

More recent improvements since 2021 include the following:

Operational improvements

- In coordination with the Department of State, using all available employment-based visas for fiscal years 2022, 2023, and 2024, apart from those visas that Congress has allowed to carry over to the employment-based visa limit for the following fiscal year.
- Increasing the maximum validity period of Employment Authorization Documents (EADs) to 5 years for adjustment of status applicants and bringing back "combo cards" that provide evidence of both employment authorization and advance parole.
- Expanding premium processing to all filers of Form I-140, Immigrant Petition for Alien Workers, as well as certain filers of Form I-765, Application for Employment Authorization, and Form I-539,

Application to Extend/Change Nonimmigrant Status.

- Updating policy guidance on expedite requests, including when USCIS may expedite adjudication of an Application for Travel Document (Form I-131) when an applicant demonstrates a pressing or critical need to leave the United States, whether the need to travel relates to a *planned or unplanned* event. In addition, the guidance clarifies expedite requests supported by a government agency.
- Removing the biometrics fee and appointment requirement for applicants for a change or extension of nonimmigrant status (Form I-539).
- Announcing process enhancements for deferred action requests by workers, including H-1B workers, to support labor and employment agency investigations.
- Making progress on reducing processing times.

Policy improvements

- On Dec. 18, DHS published a final rule to improve the H-1B program by modernizing and providing program efficiencies, increasing benefits and flexibilities, and strengthening integrity measures. Among other provisions, this rule revises the definition of and criteria for specialty occupation positions to codify current practice; codifies the deference policy under which adjudicators generally should defer to a prior determination when no underlying facts have changed; modernizes H-1B cap exemptions; extends "cap-gap" protections for F-1 students changing status to H-1B; codifies H-1B eligibility for beneficiary owners; and implements a number of integrity measures pertaining to site visits and third-party placements.
- Strengthening the integrity of the H-1B program with a final rule that created a new beneficiary-centric selection process for the FY 2025 H-1B registration period. This new rule has resulted in dramatically fewer attempts to game the system, as evidenced by H-1B registration data. In addition, under the new beneficiary-centric selection process, if a worker has multiple legitimate job offers and any of these registrations are selected, then the worker may choose which employer to work for.
- Updating policy guidance for foreign students, including clarification that F and M students must have a foreign residence that they do not intend to abandon, but that such students may be the beneficiary of a permanent labor certification application or immigrant visa petition and may still be able to demonstrate their intention to depart after a temporary period of stay. In addition, the guidance specifies how F students seeking an extension of optional practical training (OPT) based on their degree in a STEM field may be employed by startup companies, as long as the employer adheres to the training plan requirements, remains in good standing with E-Verify, and provides compensation commensurate to that provided to similarly situated U.S. workers, among other requirements.
- Updating the agency's interpretation of the Child Status Protection Act to provide additional protection for child beneficiaries of alien workers from "aging out" of child status and allowing them to seek permanent residence along status with their parents, including clarification of the "sought to acquire" requirement.
- Publishing updated guidance on when a Form I-140 beneficiary may transfer, or "port," to a new job, providing clarity to those seeking to change employers during the lengthy process of becoming a lawful permanent resident.

Greater clarity

- Publishing resources for nonimmigrant workers following termination of employment, to ensure that nonimmigrant workers who are laid off are aware of options that may permit them to remain in the country past the regular 60 day grace period.
- Issuing guidance on the eligibility criteria for compelling circumstances Employment Authorization Documents (EADs). For example, a principal applicant with an approved immigrant visa petition in an oversubscribed visa category or chargeability area, who has lived in the United States for a significant amount of time, could submit evidence such as school or higher education enrollment records, mortgage records, or long-term lease records to support a potential finding of compelling circumstances. Compelling circumstances could include, if, due to job loss, the family may otherwise be forced to sell their home for a loss, pull their children out of school, and relocate to their home country.
- Publishing information on the full range of options for STEM professionals and entrepreneurs to work in the United States, and issuing new policy guidance to provide clarity for:
  - Individuals of extraordinary ability (O-1)
  - Individuals of extraordinary ability and outstanding professors and researchers (EB-1)
  - Individuals with advanced degrees or exceptional ability who can self-petition with a National Interest Waiver (EB-2 NIW)
  - Start-up founders growing their companies in the United States under the International Entrepreneur Rule.

Meanwhile, the Department of State has launched an Early Career STEM Research Initiative as part of the J-1 visa program, as well as a domestic visa renewal pilot program.

We will keep working within our legal authority to provide as much flexibility, predictability, and dignity as possible for all those waiting for their chance to become a lawful permanent resident and ultimately a U.S. citizen.

Related Resources

- H-1B Specialty Occupations
- Employment-Based Adjustment of Status FAQs
- Employment Authorization for Certain H-4 Dependent Spouses.
- Employment Authorization in Compelling Circumstances
- Options for Nonimmigrant Workers Following Termination of Employment
- Options for Alien STEM Professionals to Work in the United States
- Options for Alien Entrepreneurs to Work in the United States

Close All Open All

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