

FAQ: "My nonimmigrant petition is approved. What's Next?"

Congratulations on the approval of your nonimmigrant visa petition.

This document helps answer Frequently Asked Questions about your new status and related issues. Please carefully read and retain this document for future reference.

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*This material is not intended to substitute as legal advice.

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1. I learned that USCIS approved my petition. What are the next steps?

USCIS mails the hard copy of your approval notice to your employer and attorney. Typically, it takes 4-8 days after the electronic approval to receive the hard copy approval.

If you are in the U.S. in valid status and requested a change of status or extension of stay:

The approval notice will contain a detachable I-94 card at the bottom. Your I-94 card is evidence of your employment authorization and authorized stay during the stated validity period.

If you are abroad or requested that your approval be processed for consular notification:

The approval notice will not contain the I-94 card.

You will need to apply for a visa at a consular post abroad and enter the U.S. under that visa. This is another critical process. We can assist you through the visa application process and prepare you for the visa interview.

2. What are my responsibilities to stay legal?

- You must keep your approval notice in a safe place. It is extremely difficult to replace an Approval Notice. Note, there might be a difference in the validity duration of your petition (Form I-797, approval notice) and your I-94 card. For example, for H-1B workers, the I-94 card might include an additional 10 days at the end of the validity period. These 10 days are intended as a grace period with no work authorization.
- You are required to notify USCIS of any address changes (unless you permanently depart the U.S. or become a U.S. Citizen). This can be done electronically using form AR-11 within ten days of your address change. A separate form is required for each family member.
- You are required to maintain a current passport for your entire period of authorized stay in the U.S. Check with your home country's consulate about the renewal process and apply early.
- You are responsible for keeping track of the expiration date of your status as noted in your approval notice. You must notify your employer at least six months in advance of the expiration date if you wish to remain in the US beyond the validity date so that an extension or some other appropriate action can be taken in a timely manner.
- You must notify your employer and attorney immediately if any material changes in employment occur. Your petition was approved for a specific employer and location, and certain material changes might require a new filing.
- You must check you I-94 record for correctness every time you re-enter the U.S. The I-94 record is evidence of your legal status in the U.S. and status expiration date. It can be used for Form I-9 employment verification, driver's license and social security number applications.

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In most cases, the I-94 record can be accessed, viewed, and printed online. We recommend you print a copy for your records. If information recorded by CBP is incorrect, contact the CBP deferred inspection site or visit a local port of entry to fix the error(s) as soon as possible to avoid negative consequences.

- You must apply for a Social Security Number, if you do not have one already. It is best to wait 10-15 business days after the approval before applying for a SSN. This will allow time for the immigration status to be updated in the system for the Social Security Administration (SSA). The SSA must verify the person's immigrant status with the Department of Homeland Security (DHS). If the applicant departs the U.S. while the SSN application is pending, the system may indicate the departure and the application may be suspended. We recommend the applicant remains in the U.S. until the Social Security card is issued. An employee can begin work for an employer while his/her Social Security Number (SSN) application is pending.

3. What do I need to show my employer to verify that I'm work authorized?

You must complete the Form I-9, Employment Eligibility Verification and provide documents on the list of acceptable documents, such as I-94 record, approval notice, and passport, as applicable.

4. Can I travel abroad?

If you plan to travel abroad, advance preparation and strategy is critical. Individuals must consider both aspects of the visa and entry to the U.S.

If your petition was approved as a change of employer for the same visa classification, and have a current visa stamp in your passport from a former employer, it may be possible to use the current visa stamp as many visas are not employer specific. For example, the H-1B, TN, P-1, and O-1 are not employer specific. If an H-1B worker changes employer, you may continue to travel with a valid H-1B visa issued for a former employer for that classification, however, you must also present the approval notice for the new employer. When your current visa expires, you will not be able to travel abroad and re-enter the United States until you obtain a new visa.

If your petition was approved as a change of status, you will need to apply for a new visa the next time you are abroad. For example, if you are in the U.S. in H-4 status and your change to H-1B status was approved, you can remain in the U.S. legally, however, the next time you travel abroad, you will need to obtain an H-1B visa to re-enter the U.S.

If your petition was approved for an extension of the same status with the same employer, you can remain in the U.S. legally, however, the next time you travel abroad you will need to obtain a new visa for re-entry if you do not already have a valid visa stamp. For example, if your employer

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obtained an extension of your O-1 status in the U.S. because your previous O-1 status expired, most likely your visa stamp has also expired. Thus, it is likely you will need to obtain a new visa.

For all:

Upon reentry to the U.S., we recommend you carry the following documents and have available upon request by the U.S. Customs and Border Protection (“CBP”) officer:

- Current passport (valid for at least six months beyond your intended period of stay)
- Valid visa and/or travel document
- Copy of your Form I-797, Approved Notice;
- Copies of your two (2) most recent pay statements;
- Any related documents as needed

Although some immigration officers claim that the employee should have a copy of the original I-797 approval notice when applying for entry into the U.S., this is not required by law. The receipt number on the visa stamp, beginning with three letters such as EAC or WAC, is sufficient for immigration officials to look up the petition approval in the system. However, we recommend carrying the approval notice to facilitate admission.

Upon successful reentry to the U.S., the CBP officer should create an electronic I-94 record of your legal entry and status expiration date.

Review your I-94 record at <https://i94.cbp.dhs.gov/> after every admission to ensure correctness (name, date of birth, expiration date matches the expiration date of your new approval notice.) You are authorized to remain in the U.S. only through the date indicated in your I-94 record. If the information is not correct, contact CBP deferred inspection site as soon as possible.

5. Can I work for another employer with this notice?

No. Your petition is employer-specific. It only authorizes you to work for the petitioning employer in the position and location(s) described in the petition.

You are not authorized to perform freelance, contractor, or any other type of work for a different employer. If you engage in *any* work outside of what is approved, this is a violation of your status, and it can have serious immigration consequences.

6. What happens if there are changes to my job?

If there are changes, a new petition might be required. For example, if you move to a new job location, transfer to a related company, or receive a promotion to a significantly different position.

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If you lose your job, consult with the attorney as soon as possible. You may be eligible for a grace period. The DHS has the ability to grant a grace period for foreign nationals in E-1, E-2, E-3, H1B, H1B1, L-1, O-1, or TN classification for "... up to 60 consecutive days, or until the existing validity period ends, whichever is shorter, whenever employment ends for these individuals." To qualify, you must have a valid petition and I-94 card. During the 60-day period, you would not be authorized to work, but could potentially apply for a change of employer or change of status. This 60-day grace period is only available to a qualifying foreign national once per authorized validity period of an approved petition.

7. What is the effect of H-1B approval on FICA taxes for F-1 and J-1 students?

Most students in F-1 or J-1 status are exempt from FICA (Medicare and Social Security) taxes, but once your status changes to H-1B, that exemption ends. You will become subject to FICA taxes, so your employer must begin withholding FICA taxes upon the effective date of the change.

Following the H1-B approval, you should confirm with your employer that changes have been made in the payroll systems to withhold the correct federal income tax from your pay.

8. When can I begin my green card process?

If a green card process is one of your goals, we encourage you to learn and strategize on the process as soon as possible. Typically, this is a lengthy process that involves three phases.

Phase One is the filing of a Labor Certification (PERM) with the Department of Labor (DOL). During this phase, the employer engages in systematic and mandatory recruitment to show that there is no willing, able, available, or qualified U.S. worker to perform the duties of the offered position. An essential part of this process is to draft a very specific job description and requirements with the assistance of immigration counsel. This job description will be very helpful to the employer in evaluating whether potential applicants might qualify.

Phase Two (once the PERM has been certified) consists of filing a Form I-140, Immigrant Petition for Alien Worker with USCIS.

Phase Three is the final phase and involves the preparation and filing of Form I-485, Application for Adjustment of Status (AOS) to Permanent Resident and related immigration forms and documents. This last phase allows the beneficiary and his/her dependents to apply for green cards, employment authorization, and travel documents.

Due to the limited number of immigrant visas and their retrogression, green card applicants from certain countries such as India, China, and the Philippines may have to wait for a number of years before completing Phase Three of the process. It is important to strategize and plan proactively with immigration counsel on green card options and other ways to maintain work authorization and status.

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A consultation with an immigration attorney will help you plan your future.

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