

FAQ about Nonimmigrant Visas: “I’m Approved. What’s Next?”

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

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FAQ after Receiving Your Nonimmigrant Visa Approval

Congratulations on the approval of your nonimmigrant visa (NIV). You might be wondering, “What’s next? What does this notice mean?” Here are answers to the top questions we receive after a NIV petition is approved.

For some, the approval comes via the Form I-797, Notice of Action, issued by the U.S. Citizenship and Immigration Services (USCIS). For others, such as Canadian citizens, the approval is your admission stamp issued by U.S. Customs and Border Protection (CBP).

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

Typically, once your petition is approved, USCIS mails the hard copy of your approval notice to your employer and/or attorney. It takes 4-5 days after the electronic approval is issued to receive the hard copy. Your employer and/or attorney should give you a copy of the approval notice.

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. This card is evidence of your employment authorization and authorized stay.

If you are abroad or requested that your approval be processed for consular notification, your approval notice will not contain the I-94 card. You will need to apply for the visa at a consular post abroad to enter the U.S. and activate your new status.

2. If I need to process a visa to active my new status, when can I enter the U.S.?

For most visa categories, including the H-1B, you are permitted to enter the U.S. up to 10 days before your petition validity date. For example, if your visa start date is October 1, then you can enter the U.S. on or after September 20.

To avoid potential delays, we recommend that you take copy of your I-797 approval notice and petition documents. Also, in most cases, your passport must be valid for six months passed your petition validity date.

3. When must I leave the U.S.?

After your authorized stay ends, you have 0 to 30 days to depart the U.S., depending on your visa category. For example, F-1 visa holders have a 30-day grace period, E-3 and H-1B visa holders have a 10-day grace period, and TN holders have zero grace period after their status validity ends.

The grace period is to allow you to conclude your affairs prior to departing the U.S. You are not permitted to work during this grace period, unless you have other valid work authorization.

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If you are considering staying in the U.S. beyond the validity date of your current status, you must start planning for an extension, change of status or green card early in the process. Some processes such as the green card can take from one to several years. Plan accordingly.

4. 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.

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

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.

Before *material or significant changes* occur in your job, you should consult with us. Unauthorized changes in your employment could lead to a violation of your status.

6. What should I do if my status was approved for cable notification?

In this case, your approval notice will not contain an I-94 card, and you can't begin working for your employer in this NIV status.

You will need to process a visa at a consular post abroad and enter the U.S. under that visa. The electronic I-94 record of your next entry activates your status and serves as documentary evidence of your new status in the U.S.

We suggest you apply early for your visa stamp. Depending on your visa classification, you might do so a few months to a year before the petition start date. Each consulate differs on the process and supporting documents required for visa processing. It is best to check with your specific consulate close to filing. We look forward to working with you prepare you for your visa interview.

Be aware that USCIS approval does not guarantee a successful stamping. You may receive a 221(g) query from the consulate requesting additional documentation. By planning ahead, you can work to address any issues before your visa start date.

7. What should I do if my approval notice was issued as a change or extension of status?

In this case, it should contain an I-94 card at the bottom. The I-94 card authorizes your stay for the validity period stated and ability to work for your petitioning employer.

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

8. My petition was approved as a change of employer for the same visa classification, and I have a current visa stamp in my passport from a former employer. Can I travel abroad?

It depends. 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, he or she may continue to travel on a valid H-1B visa issued for a former employer for that classification.

If you travel on a visa issued for a previous employer, you must also present the approval notice for your new employer. Each time you travel, you should ensure that the expiration date on the electronic I-94 record created at the port of entry matches the expiration date of your *new NIV approval notice*.

When your current NIV expires, you will not be able to travel abroad and re-enter the United States until you obtain a new visa.

9. My petition was approved as an extension of status. Can I travel abroad?

If your extension of status is with the same employer and in the same NIV classification, you will need to obtain a new NIV for re-entry if you do not already have a valid visa stamp.

For example, if your employer 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, to travel abroad you might need to obtain a new visa.

10. As a Canadian citizen, I am exempt from the visa requirements. My status was approved at the border. What should I do next?

If you are a citizen of Canada, or otherwise exempt from the visa requirement, you are not required to obtain a visa to enter the U.S. The I-94 stamp from the border officer serves as evidence of your approved status and length of stay.

Each time you re-enter the U.S., you should present your valid passport and evidence of your current nonimmigrant status, such as pay stubs and/or a letter of continuing employment by your petitioning employer.

Upon each entry, you should check that your I-94 record is created and your passport is stamped as evidence of your legal entry. CBP will not necessarily issue an I-94 card each time you enter the U.S., but you should at least obtain an entry stamp to document your lawful entry.

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11. How do I get a copy of my I-94 record for proof that I entered the U.S. legally and for I-9 verification purposes?

CBP has primarily transitioned to an electronic I-9. They will place an annotated stamp with the date of admission, class of admission, and status expiration date in your passport. In addition, CBP will create an electronic record of arrival, which can be accessed, viewed, and printed online [here](#).

We recommend reviewing the admission stamp and electronic information recorded by CBP after each entry. Ensure that your admission has been recorded correctly. Then print a copy of the electronic I-94 page as evidence of your status in the U.S.

If information recorded by CBP is incorrect, visit a local CBP deferred inspection site or a port of entry to fix the error(s) as soon as possible to avoid negative consequences.

A print-out of the Form I-94 can be used as proof of your lawful admission to the U.S. when applying for a driver's license, Social Security number, and completing the Form I-9, Employment Eligibility Verification.

12. 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.

13. When can I begin my green card process?

If a green card process is one of your goals, we encourage you to start 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 a 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

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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.

If you are interested in starting an application for permanent residence in the U.S., please contact the Marks Gray Immigration team via email, to set up a consultation to analyze your case and options to ensure your time, resources, and chances of success are maximized. Please contact the Marks Gray Immigration team via email at Immigrationteam@marksgray.com.

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