

# Goulder Immigration Law Firm

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## Understanding US Visas, Status and Your I-94 Arrival/Departure Record

### What is a Visa?



If you are a citizen of a foreign country, in most cases you will need a visa to enter the United States. A visa does not permit entry to the U.S., however.

A visa simply indicates that a U.S. consular officer (at an American embassy or consulate) has reviewed your application and that the officer has determined you are eligible to enter the US for a specific purpose. Consular affairs are the responsibility of the U.S. Department of State. Immigration matters are the responsibility of the U.S. Department of Homeland Security. Only the immigration officer has the authority to permit you to enter the United States. S/he decides how long you can stay for any particular visit.

A visa is a travel document issued by a U.S. Department of State Consular Officer abroad that allows the alien to whom it is issued to travel to the U.S. (e.g., by plane, boat or train) to apply for admission at a U.S. port of entry. A visa allows you to travel to the United States as far as the port of entry (airport or land border crossing) and ask the immigration officer to allow you to enter the country.

An alien in possession of a current, valid visa is not guaranteed admission to the U.S. by virtue of having been issued that visa. The USCIS (department of Homeland Security) has authority to deny admission. At the port of entry, a BCIS official must authorize the traveler's admission to the U.S. At that time the USCIS Form I-94, Record of Arrival-Departure, which notes the length of stay permitted, is stamped. The date stamped on the visitor's I-94 defines the period for which the bearer of a visitor visa is authorized to remain in the United States is determined by the USCIS, not the Department of State Consular Officer.

### Visas vs. Status



The visa serves as a travel document to allow the alien to whom it was issued to travel to the U.S. and apply for admission into the U.S. The alien must apply for admission to the U.S. during the validity period of the visa. The visa alone does not, however, confer any immigration status or employment authorization, and **the validity of the visa does not relate whatsoever to the period of time the alien is authorized to remain in the U.S.** The expiration of the visa following the alien's entry into the U.S. does not necessarily affect the alien's authorized stay in the U.S.



The period of authorized stay is indicated on the Form I-94 Arrival/Departure Record. The I-94 Arrival/Departure Record is issued to the alien at the arriving port-of-entry by the BCIS immigration officer. The I-94 Arrival/Departure Record is unrelated to the period during which a consular officer has authorized an alien to apply for admission to the U.S. under the classification indicated on the visa.

The I-94 is issued at a U.S. port of entry following an interview by a BCIS immigration officer to determine whether the alien is eligible for admission in that particular nonimmigrant category. Although the period of authorized stay is usually expressed with a beginning and ending date, for some nonimmigrant classifications the authorized period of stay may be expressed as “D/S”, meaning for duration of status.

The information transcribed on the I-94 Form at the port-of-entry is the basis for all further immigration-related activity in which you may engage while in the United States.

There are two categories of U.S. visas: immigrant and nonimmigrant.

**Immigrant visas** are for people who intend to live permanently in the U.S. Nonimmigrant visas are for people with permanent residence outside the U.S. but who wish to be in the U.S. on a temporary basis – for tourism, medical treatment, business, temporary work or study.

**Nonimmigrant visas** are for people with permanent residence outside the U.S. but who wish to go to the U.S. on a temporary basis – for tourism, medical treatment, business, temporary work, or study.



U.S. law requires that people who apply for nonimmigrant visas provide evidence that they do not intend to immigrate to the United States. It is up to consular officers at U.S. embassies and consulates to determine eligibility on an individual basis on the merits of each case. Providing requested documents does not guarantee that you will receive a visa. There is no entitlement to a visa.

Under U.S. law, the authority to issue or refuse visas vests solely in consular offices abroad. Consular officers have the authority to decide whether the evidence submitted in support of an application is sufficient to establish an applicant's eligibility for a visa. Consular officers may request additional information or documentation depending on their assessment of each person's situation.

The **Nonimmigrant Status** is the period during which a nonimmigrant has permission to stay in the U.S. in a particular immigrant category. If a nonimmigrant is in status, he or she is within the designated period of admission and behaves in accordance with his or her nonimmigrant category. If the alien is out of status or has no status (i.e., is undocumented), he or she has exceeded the period of authorized admission, or is violating status (e.g., working illegally) or has entered the U.S. unlawfully. A nonimmigrant status may or may not permit employment. The USCIS grants nonimmigrant status upon the alien's entry to the U.S. or upon change of status or extension of stay. Change of status from one nonimmigrant category to another is often possible if the alien is in the U.S. and is maintaining his or her present nonimmigrant status.

An **immigrant** is an alien who has been approved for lawful permanent residence in the U.S. Immigrants are referred to as lawful permanent residents ("LPRs") or "green card" holders. Immigrants have permanent, unrestricted eligibility for employment authorization. Evidence of immigrant status includes, but is not limited to, a Permanent Resident Card (Form I-551), Resident Alien Card, Permanent Resident Card, Alien Receipt Card, and/or "Green Card").



**Extension of Stay and Change of Status** - Certain nonimmigrant aliens who are present in the U.S. may extend their nonimmigrant stay under the same classification or change their nonimmigrant status (from one nonimmigrant classification to another nonimmigrant classification). **Aliens applying to extend or change their status must file the application before the expiration of current status and must establish that they have maintained their nonimmigrant status.** This means that if an alien violated the terms of his/her admission (e.g. accepted unauthorized employment before change of status was approved), the change of status or extension of status petition will be denied. Moreover, if a person is no longer in valid status, her/his visa is no longer valid. Accordingly, s/he must depart the U.S. and apply for a new visa at the appropriate U.S. consulate abroad in order to be lawfully admitted to the U.S. Applications for extension of stay and change of status are generally adjudicated at one of the Regional Service Centers of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). Notification that an alien has been granted extension of stay or change of status is provided on a Form I-797 Notice of Action that typically includes a tear-off replacement Form I-94 at the bottom of the Form I-797. This I-94 serves the same purpose as the original I-94. It indicates the alien's new period of authorized stay under the classification and, if appropriate, the new nonimmigrant status of the alien. Aliens may be inadmissible to the US based on grounds that include, but are not limited to: (1) health-related grounds, (2) crime-related grounds, (3) security and terrorist-related grounds, (4) public charge, and (5) previous immigration violations. For admission purposes, most foreign passports must be valid for at least six months beyond the authorized period of stay.

**Adjustment of Status** - Aliens who are outside of the U.S. and seek permanent residence in the U.S. apply for an immigrant visa at US consulates abroad and are then admitted into the U.S. as lawful permanent residents. Under certain circumstances, aliens who are present in the US may become permanent residents without having to leave the U.S. This process, which is administered at the discretion of the USCIS, is called "adjustment of status." It differs from the "change of status" process where an alien present in the U.S. changes from one nonimmigrant classification to another. In order to qualify, eligible aliens generally must be in legal immigration status on the date of filing the permanent resident application and must have maintained lawful status since admission into the United States.

Please [email me](#) or call me toll free at 1-866-US VISAS if you would like to ask me an immigration question or schedule a consultation.

**Note:** Receipt of his information does not create a client-attorney relationship. This information should not be considered legal advice. Unless you have a signed engagement letter with me, you should not consider information contained herein as legal advice and you should check with your own legal counsel before relying on this information.