

IMMIGRATION LAW IN THE HOSPITALITY INDUSTRY

Maintaining Status in the U.S.



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One of the most important yet confusing concepts in immigration law is that of maintaining status in the United States. Over the years I have seen countless foreign nationals who have fallen out of status, often through no fault of their own. To understand maintaining status, one must understand the types of documents involved, which include the following:

PASSPORTS. All foreign nationals must possess a valid passport to enter the United States. In most cases, the passport must be valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay.

I-94 cards. I-94 cards are the small white (or green) cards that foreign nationals fill out before entering the United States. On entry (at a land, sea, or air port), the US immigration inspector stamps the I-94 card with the date and port of entry and fills in the foreign national's status type and end date. The I-94 cards can also be issued by the Immigration Service if a foreign national requests an extension of stay in the United States. The end date of the I-94 card controls the foreign national's stay, regardless of the end date on any other status document the foreign national possesses.

Status Authorization Documents. Most commonly Form I-797 approval notices issued by the Immigration Service, status authorization documents can also include Forms DS-2019 (for J-1's) and I-20 (for F-1's). In some cases (usually when the foreign national is overseas), status authorization documents enable a foreign national to apply for a visa stamp

at a U.S. overseas consular post; in other cases (when the foreign national is in the United States), these documents along with a valid I-94 card authorize an extension of stay in the United States.

VISA STAMPS. Although status authorization documents enable an individual to live (and in some cases work) in the United States, visa stamps allow individuals to cross the border into the United States. Most foreign nationals, with the notable exceptions of Canadians and visa waiver travelers, must possess a valid visa stamp in order to enter the United States. The visa stamp does not confer authorization to live or work in the United States; it confers only the ability to travel to a U.S. port of entry and

allows her to travel to the United States. On the plane Chantal fills out an I-94 card, and at Dulles Airport the immigration inspector stamps the I-94 card with Chantal's date of entry and the end date of her valid H-1B status.

IMMEDIATELY BEFORE coming to the United States to work for Le Bistro, Chantal was employed for two years as the general manager of the Paris location of C'est la Vie, a multinational restaurant group that also owns a property in Virginia. After Chantal begins her H-1B employment with Le Bistro, C'est la Vie offers Chantal the general manager position in Virginia and files a petition with the Immigration Service to change Chantal's status in the United States from H-1B to L-1A so she may com-

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“knock on the door” to request entry.

TWO EXAMPLES illustrate these concepts:

Le Bistro in Washington, D.C., wants to sponsor Chantal Le Roux, a French citizen residing in France, for H-1B status to serve as its general manager. Le Bistro files an H-1B petition with the Immigration Service and obtains an I-797 approval notice, which Chantal submits to the U.S. Embassy in Paris with her valid French passport and the required visa application documents. The Embassy issues Chantal an H-1B visa, which

mence employment with its organization. C'est la Vie obtains an I-797 approval notice for Chantal, which in this case (because it is for a change of status) also includes a new I-94 card. On issuance of the new approval notice, Chantal can begin working for C'est la Vie. Note, however, that Chantal cannot travel on her H-1B visa stamp (because she is no longer in H-1B status), so on her next international trip, Chantal will need to apply for a new (L-1A) visa.

Because of the numerous documents involved (passports, visa stamps, approval notices, etc.), signif-

icant confusion exists about which documents prove that someone is maintaining status in the United States. For example, after 9/11, local police departments were checking people's visa stamps to determine whether they were in the United States legally, when in fact visa stamps have nothing to do with maintaining status in the United States.

If you have questions about a particular situation, you are advised to consult a qualified immigration attorney, as the importance of maintaining valid status cannot be overemphasized

Becki L. Young has been working in the field of immigration law since February 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, providing advice on work permits and related immigration issues.

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