



IMMIGRATION FACT SHEET

H-1B Approval Fact Sheet

This advisory addresses several important issues related to your I-797 Approval Notice that was issued by the U.S. Citizenship and Immigration Services (USCIS), including the benefits and obligations associated with the H-1B visa, as well as the different steps that need to be taken depending on whether your case was approved as a cable notification or extension of stay. Also included is a list of FAQs that are on the minds of people in H-1B status immediately following the approval of the case.

- H-1B Work Authorization Limitations:** Note that the H-1B approval notice authorizes you to work only for the petitioner in the position and location described in the H-1B petition. You are not authorized to perform any freelancing, contracting or other work for another employer. Any work outside of the H-1B approval is a violation of your status and can have serious immigration consequences.

Impact of Employment Changes: If your employer decides to move you to another job location, transfer you to another related company, or promote you to a significantly different position, you or the company should consult us before doing so. Unauthorized changes in your employment relationship could violate your H-1B status. In most cases, work for more than two continuous weeks at a location not specified in the H-1B will require an amended H-1B filing.

- Cable Notification vs. Change of Status or Extension of Stay:** If your H-1B approval notice was issued as a “cable notification” (see Picture 1) and does not contain an I-94 card at the bottom, you will need to leave the United States and reenter the United States to activate your H-1B. Please review the section below regarding cable notification approval notices. If your H-1B approval notice was issued as a change of status or extension of stay, it will contain an amended I-94 card at the bottom (see Picture 2); the I-94 card authorizes your stay in H-1B status for the validity period stated.

Picture 1

Cable Notification –
 Approval Notice
 (no I-94 card)



Picture 2

Change of Status, Change
 of Employer or Extension
 of Stay –Approval Notice
 (with I-94 card)



If Your H-1B Petition Has Been Approved as a Cable Notification:

Please note that if the H-1B approval notice has been issued for consular notification (i.e., the first paragraph of the notice states that cable notification of the approval has been sent to the consulate), you do not yet have authorization to work for the H-1B petitioner. To activate your H-1B approval and acquire authorization to work for the H-1B petitioner, you will need to make a new entry to the United States using your H-1B status issued under the I-797 Approval Notice. The electronic I-94 record of your entry serves as your H-1B status document while in the United States. Three common cable notification situations are outlined below for your reference.

- **Abroad without H-1B Visa Stamp:** If you are currently abroad and this is your first U.S. nonimmigrant status approval, you must request a visa from the U.S. consulate abroad to gain admission into the United States. In most cases, you will need to apply for the visa from the U.S. consulate in your home country or country of last legal residence. For example, if you live in India and your employer has just received an approval notice for H-1B classification on your behalf, you need to obtain a visa from one of the U.S. consulates in India and then travel to the United States for admission in H-1B status. If you plan to bring your spouse or dependent children with you, they also need to obtain dependent visas from the U.S. consulate.
- **In U.S. without H-1B Visa Stamp:** If you are in the United States when your cable notification H-1B is approved and do not already have a valid H-1B stamp, you will first need to travel outside the United States, present the approval notice to a consulate abroad in order to apply for an H-1B visa stamp, and reenter the United States using the H-1B visa.
- **In U.S. with H-1B Visa Stamp:** If you are in the United States when your cable notification H-1B is approved and already have a valid H-1B stamp, you will need to travel outside the United States, present the approval notice at a port of entry along with your valid visa stamp, and make an entry pursuant to H-1B status issued under the I-797 Approval Notice.

If Your H-1B Petition Has Been Approved as a Change of Status:

If the H-1B approval notice was issued as a change of status, you are eligible to work in the United States as of the H-1B validity date. If you plan to travel abroad, you will need a new visa if you leave the country and seek to reenter the United States. For example, if you were a student in F-1 classification and you have changed status to H-1B, you will need to obtain an H-1B visa to reenter the United States after traveling abroad.

If Your H-1B Petition Has Been Approved as a Change of Employer:

If you have been approved for work in the United States with an employer, you may continue to travel on a valid nonimmigrant visa issued for your former employer for that classification. For example, if you have been approved for H-1B classification for a new employer and have an H-1B visa in your passport from your previous employer, you may still travel on your current H-1B visa as long as it has not expired or has not been cancelled. If you travel on a visa issued for a previous employer, you must present the original approval notice showing your new employer. Each time you travel, you should also ensure that the expiration date on the electronic I-94 record created at the port of entry matches the expiration date of your new H-1B approval notice. When your

current nonimmigrant work visa expires, you will not be able to travel abroad and reenter the United States until you obtain a new visa.

If Your H-1B Petition Has Been Approved as an Extension of Status:

If you have obtained an extension of stay with the same employer and in the same nonimmigrant work classification, you will need to obtain a new nonimmigrant visa for re-entry after travel outside the United States if you do not already have a valid visa stamp. For example, if your employer obtained an extension of your H-1B classification in the United States because your previous H-1B status expired, most likely the corresponding H-1B visa stamp has also expired. If your previous nonimmigrant visa expired, you will not be able to reenter the United States following travel abroad until you obtain a new visa.

If You are a Citizen of Canada or Exempt From the Visa Requirement:

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 United States. However, each time you reenter the United States, you should present your valid passport and your original H-1B approval notice. Please note that it is important that you are inspected and lawfully admitted by an immigration inspector each time you enter the United States. Please make sure that upon each entry to the United States you check that a new electronic I-94 record is created and your passport is stamped as evidence of your legal entry. USCIS will not necessarily issue an I-94 card each time you enter the United States, but you should at least obtain an entry stamp for each entry to document your lawful entry.

FREQUENTLY ASKED QUESTIONS

What should your family members do if they need to travel abroad?

If your family members already have valid H-4 visas, they can continue to travel on those visas and their new approval notices as long as that visa is valid. If they do not have valid H-4 visas, they will need to request new visas. Please see the travel advisory fact sheet for detailed instructions on obtaining a visa.

How do I get a copy of my I-94 record to prove I have entered the U.S. legally?

The U.S. Customs and Border Protection (CBP) no longer issues a paper Form I-94 to travelers to the United States who arrive by air or sea. The CBP will place an annotated stamp with the date of admission, class of admission and status expiration date in your passport. In addition, the CBP will create an electronic record of arrival, which can be accessed, viewed, and printed online [here](#). We recommend reviewing the electronic information recorded by CBP after each entry to ensure that your admission has been recorded correctly and then printing a copy of the page as evidence of your status in the United States. If the information recorded by CBP is incorrect, then it can be corrected by visiting a local CBP deferred inspection site or at a port of entry. Mistakes in the I-94 record may cause you to violate your status and even subject you to deportation, so any incorrect information should be brought to the attention of CBP immediately. A print-out of the Form I-94 can be used as proof of your lawful admission to the United States when applying for a driver's license, Social Security number, and immigration or public benefits. The print-out of the Form I-94 can also be used by visitors who are authorized to work for completion of the Form I-9, Employment Eligibility Verification. Departure from the United States will be recorded electronically using information provided by the airline when the visitor leaves. A paper I-94 card will continue to be issued to visitors who are admitted at a land border port of entry.

What should you do if you change your address after obtaining H-1B status?

Under USCIS guidelines, all non-U.S. citizens are required to (1) report the change of address to USCIS within 10 days of the change by submitting Form AR-11 and (2) update the new address for every application and petition that is pending with USCIS referencing the receipt number of each pending case. You can obtain the form from the USCIS website [here](#). Each family member must also file a separate AR-11. We advise that you make a copy of the signed form and send it to USCIS by certified mail or federal express to show proof of delivery. Please also inform us immediately of the new address so that we can update all of your pending applications or petitions with USCIS. Alternatively, you may file the AR-11 form online to report the address change and to update the address for pending cases. If you complete the form online, please make sure to follow the online instructions and ensure that the address is updated for every pending case. Once the AR-11 form is completed online, you will receive a confirmation by e-mail. We advise that you print the page with the confirmation number as proof of filing. Please also notify us of the change so that we may update our records.

What is the effect of the H-1B approval for F-1 and J-1 students?

Under the Internal Revenue Code, students and scholars temporarily present in the United States on F-1 and J-1 visas are often exempt from FICA taxes. H-1B approval will normally have the effect of ending the FICA exemption. You should check with your employer to confirm that the withholding elections are properly changed in the payroll system following the H-1B approval.

If you have any questions regarding this fact sheet, please contact the Sidley lawyer with whom you usually work.

The Immigration Practice of Sidley Austin LLP

Our Immigration Practice develops a comprehensive and cost-effective strategy to address the unique immigration needs of each client. The legal services we offer include assistance in obtaining temporary visas, permanent residence and U.S. citizenship. We also provide employees with immigration advice related to mergers and acquisitions, corporate law, international tax, I-9 compliance and other labor issues affecting the employment of foreign nationals. We routinely represent clients before The Department of Homeland Security, Department of Labor, Department of State and U.S. consular posts worldwide.



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