

IMPORTANT TIMING CONSIDERATIONS
WHEN FILING FOR A CHANGE OF STATUS TO F-1



by

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Our office often receives calls from foreign nationals in the United States who wish to change their current, non-immigrant status (for example, B-2, H-1B, R-1, etc.) to F-1 student status. When filing for an F-1 change of status, timing is crucial.

First, the foreign national must be in valid, non-immigrant status and must apply for the change of status before his or her current non-immigrant status expires. For example, if the foreign national is in H-1B status until November 1, 2006, he must be properly maintaining his H-1B status. He cannot be in violation of his H-1B status (for example, by working without authorization for another company or by not working at all). He must maintain his H-1B status throughout the validity period of his H-1B status. This is true for all nonimmigrants seeking a change of status – in order to be granted a change of status, the foreign national must be maintaining his non-immigrant status. Immigration officers routinely ask for evidence of maintenance of nonimmigrant status if it is not included with the application for a change of status.

Secondly, assuming the foreign national has properly maintained his nonimmigrant status and has filed for the change of status to F-1 student status prior to the expiration of his nonimmigrant status, then he must make sure that there is not a gap of more than 30 days before the date his current no-immigrant status expires and the start date of the F-1 schooling (as shown on the I-20). This is because the immigration laws allow a foreign national who meets the F-1 requirements to be admitted to F-1 status no more than 30 days before the start date of the F-1 schooling. For example, if a foreign national is in B-2 status which expires on November 1, 2006, but the school starting date is not until January 5, 2007, that foreign nationals' request for a change of status to F-1 would not be approved because there is a gap of more than 30 days between the date his B-2 status expires (November 1, 2006) and the date the F-1 schooling begins (January 5, 2007).

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