



**INFORMATION FOR NON-CITIZENS IN THE UNITED STATES:
Consequences of Violating Your Authorized Period of Stay***

What happens if I overstay the period of admission authorized on my I-94?

Since 1996, non-citizens who remain in the United States beyond the period authorized on their I-94 (the card given to visitors when they enter the U.S.) have faced severe consequences. It is very important to avoid overstaying the period of admission authorized on your I-94. If you overstay your authorized period of admission, you may not be able to obtain permission to remain and work in the United States legally, even if you find an employer willing to sponsor you.

Can I come back to the U.S. if I overstay the period of admission authorized on my I-94?

Non-citizens will not be allowed to return to the U.S. for three years if they were unlawfully in the U.S. for more than 180 consecutive days (but less than one year) after April 1, 1997. This is known as the “3-year bar” to admission. Non-citizens will not be allowed to return to the U.S. for 10 years if they were unlawfully in the U.S. for one year or more after April 1, 1997. This is known as the “10-year bar” to admission. This means that even if you have an approved visa petition (including an H-1B, an R-1, or a permanent employment-based visa), you will not be allowed to re-enter the U.S. for three or ten years if you are subject to the bars.

Are there any exceptions?

Minors, persons with pending good-faith asylum applications, certain battered spouses and children, and non-citizens with an application for change, extension or adjustment of status pending who have not worked illegally are not considered to be unlawfully present in the U.S. for purposes of the 3- and 10-year bars. In addition, USCIS (formerly INS) may, in its discretion, make an exception for an immigrant who is the spouse or child of a U.S. citizen or lawful permanent resident, if not allowing the immigrant to return to the U.S. would cause the citizen or resident “extreme hardship.” In order to qualify for an exception, you must apply for a “waiver” along with your application for admission to the U.S.

What happens if I overstay for fewer than 180 days?

If you overstay your authorized period of stay by fewer than 180 days, you cannot return to the U.S. on the same visa. There are no bars to readmission (you can apply for a new visa); however, absent “extraordinary circumstances,” you can only apply for a new visa at the U.S. consulate in your country of nationality.

If I have overstayed for fewer than 180 days, will I have any problems if I apply for a new visa at the consulate in my home country?

It may be difficult to convince consular officials to issue you a new visa, even if you have overstayed for fewer than 180 days. In order to obtain a tourist visa or other temporary visa, you

* This document is aimed at providing individuals with basic information and is not a substitute for the advice of a legal professional. If you are already in removal proceedings, it is imperative that you consult with legal counsel, as some of the rules may be different for individuals in your situation. As with all areas of the law, immigration laws are subject to frequent change. The information presented here is based upon the experience of the HIAS legal staff and the most up-to-date published information available from U.S. Citizenship and Immigration Services and other sources.

must convince the consular official that you have “non-immigrant intent”—that you intend to remain in the U.S. temporarily and that you have no intention of abandoning your residence in your country. If you have overstayed your authorized period of stay in the past, it may be more difficult to prove non-immigrant intent. Some non-immigrant visas, such as the H-1B and L-1, do not require that you demonstrate non-immigrant intent.

If I overstay my authorized period of admission, can I apply for a change or extension of status without leaving the United States?

You cannot apply for a change or extension of status if you have stayed in the U.S. beyond the period of time authorized by your I-94. USCIS can make an exception if you failed to file on time due to extraordinary circumstances beyond your control (or your sponsor’s control), you continue to have non-immigrant intent (you have no intention of abandoning your residence in your country), and you have not otherwise violated your nonimmigrant status. USCIS does not routinely make exceptions.

What if the authorized period of admission on my I-94 is “D/S”?

In some cases, USCIS will allow a person to remain in the U.S. for “duration of status,” which is listed as “D/S” on the I-94. This is normally the case for students. While it may be difficult to obtain a visa in the future if the consulate determines that you violated the terms of your student visa in any way, you will not be subject to the 3- and 10-year bars, even if you remained in the U.S. for longer than allowed, unless there has been a formal determination by a USCIS official or judge that you failed to comply with the terms of your visa.

A U.S. employer offered me a job and is willing to sponsor me for a non-immigrant visa, but I entered the U.S. as a tourist and overstayed my authorized period of admission by more than 180 days. Can I get my visa?

Because your I-94 has expired, you cannot apply for a change of status in the U.S. unless you can convince USCIS to make an exception in your case. Unless you are exempt from the bars or are eligible for a waiver, if you return to your country and apply for a visa at the consulate, you will not be eligible to obtain the visa for three years because you have been in the United States without authorization for more than 180 days. If you remain in the United States for one year or more beyond your authorized period of stay, you will be ineligible for ten years.

What happens if I applied for a change of status before my I-94 expired, but my I-94 expired while the application was pending?

You have not violated your status and remain lawfully in the U.S. while your application is pending, as long as you have not worked without authorization and your application was not frivolous. If you leave the U.S. while the application is still pending, you will not be subject to the 3- and 10-year bars if you apply for re-admission to the U.S.

I’ve overstayed my authorized period of stay. What do I do now?

If you have overstayed your visa for any amount of time, you are subject to arrest and removal (deportation) from the U.S. Any contact you have with federal, state, or local law enforcement (including for any traffic or criminal law violation) may ultimately lead to your removal. If you have overstayed your visa, you should seek legal advice before submitting any petition or application to USCIS and before traveling outside the country.

For more information, contact Melanie Nezer, Counsel and Director, Employment Visa Program at Melanie.nezer@hias.org

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