Visitor B-1/B-2 VISAS

B-1/B-2 visas are the most common nonimmigrant visas used for temporary entry into the United States. B-1 visas are typically used for business-related visits while B-2 visas are used for pleasure-related visits. With few exceptions, those who enter the U.S. must be in possession of a visa granted by a U.S. consulate abroad.

A visa merely permits one to apply for entry at a U.S. port of entry; it does not guarantee entrance. Immigration officials at the ports of entry determine whether a foreign national can enter the U.S. on the visa, and will set a definite period of time in which that person is authorized to remain in the U.S. (usually six months for those visiting for pleasure and 30-60 days for business visitors). The date by which one must depart from the U.S. is stamped on a document known as an "I-94 card". The time restriction applies even to foreign nationals who possess multiple-entry visas.

Extensions of B-1/B-2 Visas:
For nonimmigrants who wish to remain beyond the period of time authorized to them, extensions must be filed within the time period authorized on the I-94 card with the U.S. Citizenship and Immigration Services (USCIS). However, foreign nationals should be advised that the USCIS rarely grants requests to extend a tourist visa without a legitimate, nonimmigrant purpose. Because the time required for adjudicating extension requests can take three months or more, applicants often do not receive a decision prior to the date on which they are required to depart.

Serious immigration consequences arise when applicants file for extensions after their I-94 departure date, as well as when applicants timely apply for extensions but remain beyond their I-94 departure date. If the extension request is denied, the applicant is immediately determined to be out of status and the B visa is automatically cancelled under INA Section 222(g). Even if the applicant departs from the U.S. immediately upon receipt of the extension denial, he or she has already been out of status in the U.S. and this can prevent future entries into the U.S.

If such an applicant attempts to return to the U.S. in the future with the same B-1 or B-2 visa, due to their prior period of unauthorized stay, the applicant will likely be refused entry unless they can present evidence of extenuating circumstances that prevented an earlier departure during their last trip to the U.S. In addition, many U.S. consulates will refuse to grant future visas on the ground that the foreign national overstayed their last visit to the U.S.

Most importantly, if an extension request is denied and the applicant remains in the U.S. beyond the denial date, unlawful presence will begin to accrue. Accrual of more than 180 days of unlawful presence will preclude the foreign national from reentering the U.S. for three years. One year or more of unlawful presence will bar reentry for ten years. The law does afford a 120-day grace period regarding the accrual of unlawful presence where an applicant timely filed an extension request; that is, unlawful presence will not begin to accrue until the extension request is denied, or until it has been pending for 121 days,

whichever occurs first. This should not be confused with failure to maintain nonimmigrant status, i.e., staying beyond the authorized period of stay stamped on the I-94 which will result in automatic cancellation of a multiple entry visa.

Because most extension requests for tourist visas will be denied, one should not apply unless good reasons exist. Examples of qualifying reasons for extensions are family or personal emergencies, urgent medical reasons, unexpected business opportunities, seminars or conferences. Extension requests should always include evidence to show that the applicant has sufficient funds to sustain himself or herself while in the U.S. Extension requests based on medical reasons must include proof of a medical condition, including current treatment, the proposed length of the treatment, and how the treatment will be paid for. If an applicant does not have a good reason for an extension, the request will almost certainly be denied. Timely departure will ensure that their B visa remains valid for future use.

Because these extensions are difficult to obtain, one should consult an experienced immigration lawyer if he is considering remaining in the U.S. beyond the time given at entry.

Consequences of Overstay

Readers should know that, should one overstay the authorized period of admission to the U.S., there is a possibility of being apprehended and removed (deported). Few people are aware, however, of the consequences for those who overstay briefly and depart before attracting the attention of USCIS. It is often assumed that, if one has a multiple-entry visa, s/he will be able to return to the U.S. for the entire period of the visa, even after having previously stayed beyond the allotted time.

A common example of this is a person with a 10-year tourist visa who is allowed by the USCIS at the Port of Entry (POE) to stay in the U.S. for 6 months. As stated above, this six-month period is indicated on the I-94 card issued to the tourist at the POE. Suppose the person remains in the U.S. beyond the allowed six months, does not file an extension with the INS, and returns home without incident after overstaying in the U.S. for less than 180 days after the I-94 expired. In such a situation, it is often assumed that one can continue to use the multiple-entry tourist visa until it expires. Unfortunately this is incorrect. Under section 222(g) of the Immigration and Nationality Act, the visa of a person who overstays becomes void after the conclusion of the period of authorized stay indicated on the I-94. This cancellation occurs without the individual's knowledge. One cannot reenter the U.S. except with a new visa applied for at the consulate in the home country or if one qualifies for a visa exemption requirement to apply for the visa in another country based on "extraordinary circumstances."

While these overstays may not have been noted on any record before now and, therefore, were not fully tracked, since September 11, 2001, the exit / entry tracking system has been improving. Therefore, while it may have been possible at one time to use visas that should have been previously cancelled, one must not assume this can be done now.

SENATE SHATTERS STUDENTS' DREAM - Statement by AILA

On October 24, 2007, American Immigration Lawyers Association (AILA) released the following statement regarding the DREAM ACT.

In a stunning display of heartlessness and gutlessness, the Senate voted today to quash the dreams and aspirations of hundreds of thousands of American students. The 52-44 vote in favor of proceeding to debate on the DREAM Act (S. 2205) fell eight votes short of the necessary 60 vote threshold. That eight-vote shortfall means a generation of American kids will remain stranded at the schoolhouse door. And while the vote is a nightmare for children, families, educators, and military recruiters throughout the country, it will also haunt the long-term political fortunes of those Senators standing on the wrong side of justice.

Make no mistake about it, the vote on this bill was about much more than immigration policy, it was a vote about who we are as a country. These young people were brought to the United States by their parents at an age where they had no say in the decision. Many have spent the majority of their lives in the United States and consider themselves to be Americans. Like their U.S.-born peers, they dream of pursuing a higher education or serving their country, but they are prevented from doing so because they lack legal status.

Obviously, our failed immigration policies put these kids in an untenable predicament and this bill sought to provide an avenue for them to secure legal immigration status. That, however, was simply a means to the bill's end of providing these faultless kids with an opportunity to fulfill their dreams, maximize their potential, and contribute to this nation. Today's vote to deny them that opportunity is a sad commentary on the state of American politics.

Our purported policy makers have shown a keen knack for sidestepping critical public policy issues and immigration policy. So we commend and thank Senators Reid (D-NV), Durbin (D-IL), Lugar (R-IN), and Hagel (R-NE) for their courage and commitment in forcing the Senate to face its responsibilities and take an up or down vote on this important issue. Sadly, too many of their colleagues succumbed to the political fears generated by a vocal cabal of xenophobic extremists.

There will be a number of additional opportunities over the next few months to pursue narrow, targeted immigration policy reforms. AILA, along with the rest of the country, will be watching closely to see if the immigration restrictionists in Congress continue their slow march to political suicide or do what they were elected to do: make smart policy choices that will advance America's interests and solve America's problems.