

Top Five Year-End Immigration Planning Tips

/ December 1, 2021 / James D. Prappas

As we head toward year-end and look forward to 2022, there are planning tips for businesses and individuals to consider in order to retain current U.S. immigration benefits and the ability to travel internationally and return to the U.S. The ability to travel internationally and return to the U.S. is a fluid situation that is subject to change.

1. New Travel Restrictions to Certain Countries in Africa

As a result of the COVID-19 Omicron variant, on November 26, 2021, President Biden signed a proclamation suspending the entry of certain non-citizens traveling as immigrants or nonimmigrants who were present in Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, and Zimbabwe during the 14-day period prior to their entry or attempted entry into the U.S. The suspension took effect at 12:01 AM EDT on Monday, November 29, 2021. U.S. citizens and lawful permanent residents (LPR, aka “green card” holders) *are not subject to the proclamation*.

2. Travel Requirements

Air Travel

Check international travel conditions before *and* during any contemplated international air travel, including vaccination requirements both for the U.S. and the country/ countries of destination. This applies to U.S. citizens, lawful permanent residents, and nonimmigrants. In terms of U.S. and international vaccination requirements, see [here](#) and [here](#). More information about the global vaccination requirement, including details on exceptions and waivers due to humanitarian concerns, is available at the [Centers for Disease Control and Prevention](#). The website also details the need for proof of a negative COVID test or documentation of recovery [here](#).

While there are exceptions for international air travel vaccinations, we recommend any nonimmigrant who has a pending application with USCIS, for example an application to adjust status or nonimmigrant change/ extension of status, contact their existing counsel prior to any contemplated international travel to determine if such travel can affect the pending application or petition. This is important because the nonimmigrant may be prevented from travel or risk abandonment of the pending application or petition with USCIS.

Travel by Land Border or Ferry

Starting November 8, 2021, the Department of Homeland Security will allow non-citizen travelers who are fully vaccinated for COVID-19 and have appropriate documentation to enter the United States via land ports of entry and ferry terminals. This will continue through at least January 21, 2022. Additionally, there are **separate rules** for unvaccinated foreign nationals, which will also continue through January 2022. Additional rules can be found [here](#).

3. U.S. Passport Expiration Dates

At times during the pandemic, there have been delays in the ability to obtain an initial U.S. passport and renewals. We recommend U.S. citizens intending to travel abroad and in need of a new passport renew their current U.S. passport as soon as possible to avoid delays and complications. Visit [here](#) for U.S. passport processing tips and updates.

4. Nonimmigrant Status Document Expiration Dates – Are the nonimmigrant's travel documents valid and accurate?

It is essential for employers and employees to calendar and monitor the expiration dates of certain key status documents, including the current I-94, I-797 approval notice, nonimmigrant visa expiration dates, and passport expiration dates. These documents affect how long a nonimmigrant can remain lawfully in the U.S. Proper advance planning, and action can have a material effect on a nonimmigrant's ability to remain lawfully in the U.S., travel internationally, and file timely extensions/ change of status. During COVID-19, at various times, freedom of movement and international travel has been restricted. The best practices are to carefully monitor the expiration dates of status documents and develop and execute an appropriate action plan.

Form I-94

In most instances, the current I-94 expiration date determines how long a nonimmigrant is authorized to remain in the U.S. *in valid legal status*. *Overstaying the I-94 date can have serious consequences*. After the nonimmigrant arrives in the U.S., we recommend the nonimmigrant obtain a printout of his/her online I-94 on the [USCBP I-94 website](#).

- The I-94 expiration date on this electronic record should match the date on the I-94 stamp placed in the nonimmigrant's passport by USCBP upon his/her entry to the U.S.
- If a nonimmigrant overstays his/her authorized period of admission in the U.S., depending on the particular facts, it may be necessary for the nonimmigrant (i) to depart the U.S. and return; (ii) to apply for an extension of status or change of status; (iii) to apply for a renewal of the nonimmigrant visa; or (iv) apply for the initial issuance of a nonimmigrant visa.
- In the event a nonimmigrant overstays his/her I-94 period of authorized admission, the options that may be available can be affected by various factors, including but not limited to the following:
 - i. the availability of nonimmigrant visa appointments at the U.S. consulate or embassy outside the U.S. which has jurisdiction over the nonimmigrant;
 - ii. the ability of the nonimmigrant to obtain a new passport; and
 - iii. any COVID-19 restrictions that may be in effect in the country where the nonimmigrant will travel to apply for his/her visa.
- Check if the nonimmigrant's I-94 was issued with a passport expiration date instead of the visa status expiration – This is important because if the passport expires prior to the nonimmigrant's current nonimmigrant status, USCBP may issue an I-94 valid only to the earlier passport expiration date. This is not an error and could result in an overstay if the nonimmigrant does not address it before expiration. To obtain an I-94 record reflecting the entire length of stay in the nonimmigrant's current authorized status, the nonimmigrant would need to travel abroad again and present his/her newly extended passport upon reentry, or apply for an extension with USCIS while in the U.S.
- *We recommend that employers and employees (i) reach out to current legal counsel to determine what options may be available well in advance of the I-94 expiration date; and (ii) to email a copy of the new/current I-94 to the current legal counsel immediately after each entry to the U.S.*
- **I-797 approval notice**

In many instances, the current I-797 approval notice determines how long a particular nonimmigrant is authorized to remain in the U.S. *in lawful status*.

- It is important to calendar when an employer, the employee, and applicable family members, i.e., spouse and children under 21 or domestic partner, are eligible to file for an extension of the nonimmigrant's current immigration status.
- Generally, it is permissible to file an extension of stay with the USCIS, six months prior to the expiration date of authorized admission as listed on the I-797 approval notice.
- If a nonimmigrant overstays his/her authorized period of admission in the U.S. as listed on the I-797 approval notice *with I-94 attached*, depending on the particular facts, it may be necessary for the nonimmigrant to:
 - depart the U.S. and return;

- apply for a renewal of the nonimmigrant status;
- apply for a renewal of the nonimmigrant visa; or
- apply for the initial issuance of a nonimmigrant visa.
- *We recommend that employers and employees reach out to current legal counsel to determine what options may be available well in advance of the I-797 approval notice expiration date.*
- **Current Visa Validity**
 - The visa stamp in the nonimmigrant's passport must reflect the nonimmigrant's current nonimmigrant visa status, it must be unexpired, and, if the visa has a limited number of entries, it must have a remaining valid entry available for reentry to the U.S. If the nonimmigrant needs to apply for a new visa while abroad in order to reenter the U.S., it is important to note the restrictions described above that may present challenges in the visa-issuance process.
 - In most circumstances, a nonimmigrant cannot travel outside the U.S. unless he/she has a valid nonimmigrant visa to return to the U.S. and a valid passport.
 - Assuming a nonimmigrant does not have a current valid nonimmigrant visa for the particular visa category which allows the nonimmigrant to work in the U.S., it is important to evaluate various issues to determine if (i) the nonimmigrant may qualify to renew his/her nonimmigrant visa; and (ii) what are the current estimated processing times to obtain a visa appointment and actually attend the visa interview. This is very important because depending upon the U.S. consulate or embassy and visa type to be requested, there may or may not be a visa appointment available. This is a big deal because if the nonimmigrant cannot obtain his/her visa on a timely basis, then the employer and/or nonimmigrant will be required to extend his/her status in the U.S.
 - There are limited exceptions to the above scenarios depending upon the particular facts such as automatic visa revalidation.
 - We recommend that employers and employees reach out to current legal counsel to determine what travel options, if any, may be available well in advance of any contemplated travel outside the U.S.
- **Passport Expiration Date**
 - In most circumstances, a nonimmigrant cannot travel outside the U.S. unless he/she has a valid passport valid for at least six months beyond the expiration date of the nonimmigrant's period of admission to the U.S. Many countries have an agreement with the U.S. under which a passport is deemed valid for an additional period of six months.
 - We recommend that nonimmigrants monitor the expiration date of their current passport and initiate actions to renew their passport in consultation with their existing counsel well in advance of any contemplated international travel and at least six months prior to the expiration date of the current passport.

5. **2022 H-1B petitions for new employment**

We recommend that employers evaluate and consider their 2022 hiring needs on or before mid –January 2022 to initiate the process to apply for H-1B petitions for new employment.

- Registrations may be submitted over a two–or three–week period (to be announced by USCIS).
- Assuming there are more registration submissions than available cap numbers, USCIS will conduct a computer-generated lottery, and results will be released by March 31, 2022.
- For selected registrations, employers have 90 days to submit a full petition to USCIS.
- USCIS may hold subsequent lotteries if not all selected registrations result in an H-1B petition filing.
- It is important to note that each H-1B registration submission is an attestation that the employer will submit an H-1B petition if selected in the lottery.

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