

Important Immigration Issues Impacting Legal Status in the U.S.



Immigration Blog

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February 21, 2025 | **IMMIGRATION**

With all the recent press about illegal immigrants being deported from the United States, it seems timely to write a reminder of what kinds of issues can impact one's legal status in the United States.

How do I know if I have status?

If you have any questions about whether you hold legal status, the first place to look is online at the Customs and Border Protection (CBP) website. There, you can often download your online I-94 Arrival/Departure record, which shows your entry information, including your most recent entry, status you were admitted in, and date you are authorized to stay in the United States. If you stay beyond your authorized time, you will be considered "out of status," and those who accrue time in unlawful presence can potentially suffer consequences such as visa cancellation or being barred from entering the United States for any reason for a period of time.

We recommend that you check your I-94 Arrival/Departure record after each and every entry to the United States,

both to be aware of the time you were granted and also to make sure that CBP admitted you in the correct status. It is not uncommon for CBP to admit someone who holds a work-authorized status or visa as a visitor, for instance. When this occurs, you are not authorized to work (even though you have previously been granted permission to work when admitted in the work authorized status), and you must ask CBP to correct the I-94 before you can legally and lawfully work in the United States.

What status is right for me?

Deciding how to enter the United States and whether to apply for a certain type of status ahead of time (such as a “work authorized” status) depends on your short-, medium- and long-term goals. For example, someone who needs to be in the United States quickly to work for a company affiliated with the one they have been working for outside the United States might want to apply for an intracompany transfer and enter in L-1 status.

Parole versus admission

Likewise, the type of admission matters. Under U.S. immigration law, Department of Homeland Security (DHS) agents have discretion to grant “parole” to certain noncitizens to allow them to enter or temporarily remain in the United States for specific reasons. “Parole” under immigration law has an entirely different definition than “parole” in the context of criminal justice. Immigration “parole” allows certain noncitizens to physically enter or remain in the United States if they are applying for admission but do not have a legal basis for admission. Common types of “parole” include being admitted for humanitarian relief or because there is a significant public benefit to the individual being granted entry.

Importantly, individuals “paroled” into the United States have not been formally admitted into the United States for purposes of immigration law. As stated by USCIS, “Parole is not intended to be used solely to avoid normal visa processing procedures and timelines, to bypass inadmissibility waiver processing, or to replace established refugee processing channels.” Therefore, there may be requirements for parolees entering the United States this way, that are not requirements for other foreign individuals entering the United States via the formal “admission” process. In some cases, U.S. immigration places conditions on parole, such as reporting requirements. If these requirements are not met, the Department of Homeland Security may revoke parole at any time and without notice.

“Admission” is different than “parole.” If you are admitted based on a pre-authorized status and accompanying visa (such as admission as a refugee, fiancé of a U.S. citizen or an individual already approved for a work-authorized status such as L-1 intracompany transferee, H-1B specialty occupation worker, O-1 extraordinary ability worker, E-2 treaty investor or E-1 treaty trader, etc.), you do not need to be “paroled” in. Instead, you will be legally admitted based on your qualifications under your approved application for a visa or lawful status.

Likewise, certain admission statuses may have limitations attached. For example, if one is admitted to the United States under the Visa Waiver Program, he or she is authorized for a temporary admission for tourism or business visitor purposes only. The foreign national cannot then decide to apply to adjust their status to permanent resident from within the United States. The exception to this is if the individual qualifies as an Immediate Relative to a U.S. citizen who will file a petition for him or her.

Visa exemption

Canadians are visa-exempt, meaning they do not need a physical visa in their passport in order to enter the United States in most statuses. Some exceptions to this are the E visas, which are treaty-based and require application through the Department of State and an interview at a U.S. Consulate in Canada, after which approved applicants are issued a physical visa that needs to be presented upon each E visa entry to the United States. K-1 fiancées of U.S. citizens always require visas, as do some A-1 diplomats.

Other issues impacting status

Criminal issues — whether pardoned in your home country or not — can also prevent you from obtaining status in the United States. This is true whether you have entered one time or a hundred times since your conviction. Criminal histories can pop up at any time, and having been admitted previously without issue does not necessarily mean you are free and clear of inadmissibility. Likewise, health issues can impact one's admissibility or ability to obtain status in the United States. If an admitting or adjudicating officer is concerned that you may be inadmissible on health-related grounds — such as because they are concerned that you might be an alcoholic or have a drug problem — they can order you evaluated and cleared by a USCIS-approved panel physician before admitting you to the United States. Other health-related issues — such as not having certain required vaccines — can prevent one from obtaining permanent residence or require that you be granted a waiver of inadmissibility before being approved for status as a permanent resident. There currently are no requirements for nonimmigrants to have received certain vaccines in order to be admitted to the United States.

Entering the United States without status is one of the worst choices you can make, if you wish to establish legal status in the United States. This can have short- and long-term consequences that may be difficult to distance yourself from, and that could make it impossible to obtain a visa in the future or return to the United States legally. For example, if you enter the United States lawfully and then overstay your allotted time and eventually marry a U.S. citizen, you can apply for permanent residence, even if you overstayed your allotted time in the United States by years; if you entered illegally, however, you can only qualify for permanent residence by leaving the United States for what may be a lengthy term, running the risk of not regaining entry to the United States.

If you have concerns about whether you are able to obtain or maintain status in the United States, please reach out to a qualified U.S. immigration professional to determine your options and decide on the best path forward to achieve your travel or residency goals. Our Immigration Practice Team at Lippes Mathias LLP stands ready to assist. Please contact Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com) with any questions.

This article was originally published by [Law360 Canada](#), part of LexisNexis Canada Inc.

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