

Memorandum

TO: Employees Seeking Nonimmigrant Visas
FROM: Seyfarth Shaw Business Immigration Group
RE: General Information on Obtaining a Nonimmigrant Visa Stamp

I. Purpose

This Memorandum provides general information about obtaining a visa stamp at a United States consular post abroad. This Memorandum also explains several processing alternatives that may be available to you. *Please read this Memorandum carefully before directing any questions to Seyfarth Shaw.* For a detailed discussion about the delays you might encounter when visa stamping, please visit www.immstar.com and click on ***Immigration Memoranda*** to view the document entitled “Important Information for Foreign Nationals Traveling Internationally.”

II. General Need for Visa Stamp

You may have received an original Notice of Approval (Form I-797), a copy of the nonimmigrant visa petition that was filed for you, and an e-mail from Seyfarth Shaw to your employer discussing the approval of your nonimmigrant visa petition. **Please note, however, that if you plan to travel internationally to any country other than Canada or Mexico, you must have a valid visa stamp in your passport in order to return to the U.S.** For example, if you are a citizen of India who has just changed from F-1 student status to H-1B employee status, you may travel to Mexico or Canada for less than 30 days and return with your prior F-1 visa stamp and your new H-1B approval notice. However, if you plan to visit any other country, you cannot return to the U.S. until you first obtain an H-1B nonimmigrant visa stamp.

III. Traveling on an Existing Valid Nonimmigrant Visa

Applying for a visa through the U.S. embassies and consulates abroad has become more complicated and time-consuming due to the government’s increased security measures. These new procedures can lead to extended delays that could prevent you from re-entering the U.S. for weeks or months at a time. For this reason, we encourage you to consider traveling on an existing valid nonimmigrant visa stamp.

If you already have an unexpired work-authorized nonimmigrant visa stamp in your passport (such as an H-1B, L-1, or O-1) and if it matches your current work permit status, it may not be necessary for you to obtain a visa stamp to return to the U.S. For example, if you already have an H-1B visa stamp in your passport and that stamp will still be valid on the day of your proposed return to the U.S., then you do not require a new visa stamp. Instead, you may re-enter the U.S. with a visa stamp indicating your former employer and the original of your approval notice indicating your current employer.

IV. Applying for the Nonimmigrant Visa at a U.S. Consular Post

If the above alternative is not available to you and if you are required to travel internationally, then you will need to apply for the nonimmigrant visa stamp at a U.S. consular post while you are outside the United States.

A. General Information About Timing

With limited exceptions, getting a visa stamp now requires a personal interview, and many consular posts have significant (weeks or months) interview appointment lead times. It is usually difficult or impossible to accelerate an appointment. At many consular posts there may be an additional period of up to several weeks between the interview appointment date and the date of return of the passport containing the new visa.

To minimize potential delay and disruption of travel, if you are or will be required to get a visa stamp to enter the United States, you must contact the U.S. Embassy or Consulate at which you intend to apply in order to schedule an appointment for the visa interview and determine the consular post's processing times. Please visit www.usembassy.gov to access the web site for the U.S. consular post at which you will apply. You may also wish to visit http://www.travel.state.gov/visa/temp/wait/wait_4638.html to research the processing wait times at each consular post.

Further, if your occupational field involves an area which could be considered a threat to U.S. security, you may encounter additional delays before you receive your visa. Please be aware that even if your line of work is in no way detrimental to U.S. security, a consular officer may, at his or her discretion, require you to undergo an additional security clearance. For more information about occupations that may be considered to involve risks to U.S. security, please visit www.immstar.com and click on *Immigration Memoranda* to access the document entitled "Technology Alert List."

You should be aware that in November 2007, the Department of State implemented a Petition Information Management System ("PIMS") that requires U.S. consular posts to obtain electronic verification from the Kentucky Consular Center of all H, L, O, P and Q visa petition approvals before issuing visa stamps. Under normal circumstances, it should take the Consular post no more than 3 days to obtain this electronic verification, so you should be prepared for visa processing to take an additional 3 days. If your visa issuance is delayed for more than 72 hours after your visa interview due to PIMS verification, please contact Seyfarth Shaw.

Note that you should notify Seyfarth Shaw as soon as possible if you have any criminal issues or severe traffic violations (such as driving under the influence/drunk driving), as this may significantly impact your visa processing procedure.

B. Where Should You Apply for the Visa?

The absolute best place for you to apply for a nonimmigrant visa is at a U.S. consular post in your home country or the post closest to your foreign residence. Applying in your home country or in your country of foreign residence generally results in a quicker application process and eliminates some possible obstacles to visa issuance.

C. Are You Required to Process in Your Home Country?

There is no better place for you to apply for a visa than in your home country. This is because: (1) as a citizen or resident of that country, you have the strongest right to present yourself at a consular post located there; and (2) the consular staff in your home country will be the most familiar with your educational background, evidence relating to financial support, and any other important political, social, or cultural factors that are relevant to your application.

D. What About Applying for the Visa in Canada or Mexico?

If you apply for a visa stamp in a country other than your home country, you are considered by the U.S. authorities to be a Third Country National or “TCN.” This designation means that you are neither a national of the U.S. nor of the country in which you seek to obtain a visa. For example, a Greek citizen who applies at the U.S. consulate in Toronto, Canada is a “TCN” because he or she is neither a U.S. citizen nor a Canadian citizen.

You might wish to consider the possibility of TCN processing in Canada or Mexico, but note that there is no guarantee that a TCN applicant will receive a visa. The consular officer may deny your case and ask you to apply instead in your home country. In such a case, it is likely to be noted in your passport as a “Denial Without Prejudice,” i.e. there was nothing wrong with the merits of your case but the location of the application was unsuitable. Note further that **if you have been denied a visa in Canada or Mexico, you are not allowed to re-enter the U.S. until you return to your home country and obtain a new visa stamp.**

For more detailed information about the TCN visa application process, please visit www.immstar.com and clicking on ***Immigration Memoranda*** to access the document entitled “TCN Processing.”

V. What Documents Do You Need to Present to Obtain the Visa?

A. Documents Needed for Your Application

You will need to present the following documents:

1. A passport valid for at least six (6) months into the future.

Each applicant will receive an individual visa, and each Machine Readable Visa (“MRV”) covers a full page. Therefore, passports must contain at least one blank, unmarked visa page to accommodate a U.S. visa.

2. The original Form I-797 (Notice of Approval) issued by the USCIS.

The form will indicate your current employer and the approval period for the work assignment.

3. A copy of the entire visa petition.

We sent you a complete copy of the visa petition at the time of filing. It contains all the forms and exhibits that we submitted to the USCIS. Please bring this entire petition - do not separate the pages!

4. A copy of a company brochure or a recent Annual Report.

You can obtain this from your Human Resources office.

5. Form DS-160

You must complete and submit a Form DS-160 on-line and then print the associated confirmation page. You should access <https://ceac.state.gov/genniv/> to complete and submit the Form DS-160. For a more detailed information about the DS-160, please visit www.immstar.com and click on **Immigration Memoranda** to view the document entitled “How to Complete the Form DS-160.”

6. Photograph

One passport-size photograph for each applicant, with the applicant facing the camera. The background must be white or light, and the photograph dimensions should be 50mm by 50 mm. Even though you will upload a photograph to Form DS-160, you should bring a hard copy photograph to the appointment in case of any issues with the electronic photo.

7. Machine Readable Visa Fee

There is a mandatory *non-refundable* fee for each Machine Readable Visa. The fee depends on the type of visa for which you apply. Please visit http://www.travel.state.gov/visa/temp/types/types_1263.html#temp for the Department of State’s visa fee schedule. In some cases, you may have the option of paying with local currency. Please check with your specific consular post for further information.

8. “Reciprocity Fee”

In addition, citizens of certain countries must pay a “Reciprocity Fee.” Reciprocity fees vary from country to country. To find out if you must pay a reciprocity fee and to determine the exact amount, go to the reciprocity tables located at the Department of State web site at http://www.travel.state.gov/visa/fees/fees_3272.html.

9. Employment Letter

This letter should identify your name, job title, and annual salary. It should confirm that you continue to work with your present employer. This letter must be on company letterhead and signed by a Manager or Human Resources professional.

B. Documents Needed for the Visa Application of a Family Member

If you are recently married and wish to obtain a dependent visa for your spouse, or for any unmarried children under the age of 21, please make sure that you read carefully the section on where to apply. In addition, please note that **first-time applications by spouses of newly-wed H-1Bs or L-1s should only be made at a consular post in the home country.**

1. A passport valid for at least six (6) months into the future.

Each applicant will receive an individual visa, and each Machine Readable Visa (“MRV”) covers a full page. Therefore, passports must contain at least one blank, unmarked visa page to accommodate a U.S. visa.

2. The original Form I-797 (Notice of Approval) issued to the working spouse by the USCIS.

The form will indicate the working spouse’s current employer and the approval period for the work assignment.

3. A copy of the entire visa petition.

We sent a complete copy of the visa petition for the working spouse at the time of filing. It contains all the forms and exhibits that we submitted to the USCIS. Please bring this entire petition—do not separate the pages!

4. A copy of a company brochure or a recent Annual Report.

The working spouse can obtain this from the Human Resources office.

5. Form DS-160

You must complete and submit a Form DS-160 on-line and then print the associated confirmation page. You should access <https://ceac.state.gov/genniv/> to complete and submit the Form DS-160.

6. Photograph

One passport-size photograph for each applicant, with the applicant facing the camera. The background must be white or light, and the photograph dimensions should be 50 mm by 50 mm. Even though you will upload a photograph to Form DS-160, you should bring a hard copy photograph to the appointment in case of any issues with the electronic photo.

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9. Employment Letter

This letter should identify the name, job title, and annual salary of the working spouse. It should confirm that the working spouse continues to work with the present employer. This letter must be on company letterhead and signed by a Manager or Human Resources professional.

10. Marriage Certificate.

A marriage certificate that lists the full names of each spouse along with the place and date of the marriage. If it is not in English, it must be accompanied by a certified translation.

11. Evidence of "Good Faith" Marriage

To guard against fraud, many consular officers will ask for evidence of a "good faith" marriage, meaning one for purposes other than obtaining a U.S. visa. You should bring evidence such as a wedding photograph, joint bank statement, or other similar documentation to confirm the nature of the relationship.

12. Bank Statement

Dependents of H-1B visa holders are not permitted to work. Thus, the H-4 spouse should also be prepared to present evidence of savings. It is advisable to have prepared a bank statement or bank letter (either from the home country or the U.S.) noting amounts that the couple has in a checking or savings account. This may be a joint or individual account.

VI. Conclusion

Obtaining a visa stamp at a United States consular post abroad can be a challenging and time-consuming process. It is critical to review the policies, procedures, and requirements of the consular post at which you will apply to ensure you bring all required materials. Similarly, it is important to plan your travel to account for local processing times and the possibility of delays.

If you should have any questions about the visa application process, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.