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Travel while H-1 COS is pending

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Submitted by Chief Editor on Apr 5th 2016

My Spouse is on H-4 and has a Valid H-4 stamped till Jan 16 2017. I am planning to apply H-1 for my Spouse through an Employer this year. Is it advisable to travel to India while her H-1B is in Process? What will be the implications if she travels to India?

ANSWER:

Watch Video: Travel while H-1 COS is pending ^[2]

Video Transcript: Whenever you are on one status and you apply for another status, like from F-1 to H-1, from H-1 to H-4 or from tourist visa to student visa, anytime you have a situation where you are going from one status to another your application with the government has two requests implicitly contained in your application. One request is find me eligible for the status I am asking for. When I go from H-4 to H-1 I tell the government (USCIS) can you please hold me to be eligible to receive H-1 and if they say yes then you go on to the next step.

Next step is actual change of status. So not only do I want to be held eligible for H-1, I want you to then change my status to H-1. So there are two applications within that one application when you file for going from one status to another. One is the determination and the other one is the change. When you travel outside USA generically speaking there can be exceptions. Generically and generally speaking your application for determination is not invalid but your change of status is invalid. So what does that do. Let's say I am on H-4 like the questionnaires wife is and they file for my H-1 change of status, I travel to India or Switzerland where ever I want to go and I come back. Government will give me my H-1 if it is approved, but they won't give me status change from H-4 to H-1. I am still on H-4, my H-1 is approved but only the determination has been issued that I am entitled to an H-1. Now I have two choices either I cannot apply for change of status from H-4 to H-1, because by traveling out I abandoned that part. I didn't abandon my determination request but I abandoned my change of status. The second option is to go to a consulate and get a visa stamping and come. So if she travels she has to do one of these two things when she comes back. She won't have to wait outside the USA if she doesn't want to. She can come back on H-4.

Note: This is a verbatim transcript of the referenced audio/video media delivered as oral communication, and, therefore, may not conform to written grammatical or syntactical form.

Nonimmigrant Visas:

[Change of status](#) [3]

[General Nonimmigrant Visa](#) [4]

[H-4 Visa](#) [5]

[H-1 Visa](#) [6]

FAQ Transcript:

Note: This is a verbatim transcript of the referenced audio/video media delivered as oral communication, and, therefore, may not conform to written grammatical or syntactical form.

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [7] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [8]

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Links:

[1] <https://immigration.com/faq/travel-while-h-1-cos-pending>

[2] <https://youtu.be/MSd8KIH8lAs?t=523>

[3] <https://immigration.com/visa/nonimmigrant-visas/change-status>

[4] <https://immigration.com/visa/nonimmigrant-visas/general-nonimmigrant-visa>

[5] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-4-visa>

[6] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-1-visa>

[7] <http://www.immigration.com/law-offices-rajiv-s-khanna-pc>

[8] <http://www.immigration.com>

[9] <https://immigration.com/JavaScript%3Avoid%280%29%3B>