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H-1B or Other Status Denied - What is my Status?

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Submitted by Chief Editor on Feb 14th 2018

My I-94 expired on Dec 13th last year. Company filed for extension but RFE....now i will be laid off on Feb 9th and my company will not file for RFE response. How many days do i have to leave the country? Do i need to leave immediately on Feb 9th or can i leave by Feb 13th or 14th ? Will 5 days of out of status impact my future applications ? Also another company has offered me a job. If they file for H1B do they have to do it after I leave the country or can they start it and i can leave in between and do Counselor processing?

ANSWER:

Watch the Video on this FAQ: H-1B or other status denied - what is my status? ^[2]

Video Transcript

Basic Concepts to be in Status

To be in Status means you got the right kind of I-94. For example, if you are on H-1B and you have got an H-1B and I-94 which is unexpired and a proper approval from the USCIS to work for that employer at that location and you get paid and you are doing the work that you are supposed to be doing. So Status is a combination of immigration permissions as well as the work you do in the context of H-1B. In the context of F-1 it is the study that you do, so you could have an F-1 approval on paper, but you are not attending school, you are out of status or you could have an H-1B approval with an unexpired I-94 but you are not approved to work at the location you are working.

Therefore, it is a mixture of immigration permissions and the activity which is permissible and expected under the immigration permissions.

Then comes unlawfully present. This is a very complicated concept. Unlawful presence is dangerous because 180 days of unlawful presence will make you ineligible to enter the United States for three years. One year of unlawful presence will make you ineligible for 10 years.

Now typically the unlawful presence begins with I-94 expiration or a finding by the USCIS or by an immigration court if you are in proceedings in deportation etc... that you are out of status and unlawfully present. That's the date your unlawful presence will kick in. This is a very complicated concept.

So when you are not doing the activity or don't have the proper legal permissions you could be out of status and unlawfully present that's the third concept and the fourth concept is authorized period of stay. This is in between status. You are allowed to stay in the United States, but you cannot convert from one status to another, from authorized period of stay to status. An example: lets say you were on H-1 and you filed for I-485 Adjustment of Status you let the H-1B expire you working on EAD you are in an authorized period of stay. If you want to go back to H-1 you cannot do a conversion or a change of status from Adjustment of Status to H-1. You can get an H-1B approval, but to get this status you have to leave USA get a visa stamp and come back because authorized period of stay is not status.

These are very important. Please share them with as many people as you can especially in today's environment when Trump administration is in my opinion illegally denying a lot of cases. [More...](#) [2]

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:

[Unlawful Presence](#) [3]

[Status](#) [4]

[Change of status](#) [5]

[I-94](#) [6]

[H-1 Visa](#) [7]

FAQ Transcript:

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [8] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [9]

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Links:

[1] <https://immigration.com/faq/h-1b-or-other-status-denied-what-my-status>

- [2] <https://youtu.be/fFPwgrmbrE?t=150>
- [3] <https://immigration.com/visa/nonimmigrant-visas/unlawful-presence>
- [4] <https://immigration.com/visa/nonimmigrant-visas/status>
- [5] <https://immigration.com/visa/nonimmigrant-visas/change-status>
- [6] <https://immigration.com/visa/nonimmigrant-visas/i-94>
- [7] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-1-visa>
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