

Recent Developments in Change of Status Applications

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What is a Change of Status (COS)?

- Allows foreign nationals who are physically present in the United States in a lawful nonimmigrant status to obtain a new status without traveling/applying for a visa
- **The alternative:** applying for the visa category at a U.S. Embassy abroad

Things to Keep in Mind When Applying for COS

- Must be present in the U.S. **AND** in lawful nonimmigrant status at the time of filing
- **CANNOT** depart the U.S. until the Change of Status is approved (otherwise will be denied)
- May need to maintain initial status until change of status approved

Common Change of Status Situations For Employers

- Filing H-1B CAP Petitions
 - F-1 OPT/CPT Change of Status
 - Other nonimmigrant visas: TN, L-1, E-3, H-1B1, J-1, etc.
- Other nonimmigrant petitions
 - Dependent spouses and children (e.g. F-2 to H-4; L-2 to H-4, etc.)

Common Change of Status Situations For Education Institutions

- Foreign nationals seeking to change their status to that of an F-1 student
 - B-1/B-2 to F-1 considerations
 - J-2, H-4, E-2, L-2 to F-1 considerations for dependents who are aging out

Latest Developments and Trends

- Current USCIS processing times (I-129): varies by category
 - H-1B: 7 to 12 months
 - E-3: 4 months or more
 - NOTE - Premium Processing
- USCIS Processing Times (I-539):
 - 4 to 16 months

Latest Developments and Trends

(Continued)

- New USCIS trends:
 - Focus on maintenance of status
 - Increased RFEs
- Impact - USCIS memo on F, J, and M unlawful presence

The Pros

- Can remain in the U.S. (personal/family/employment considerations)
- Avoid travel costs
- Limit the risk administrative processing delays

The Cons

- Cannot travel outside of the U.S. once filed
 - Departure = Abandonment = Denial
 - F-1 cap gap considerations
- Increased Risk of a Request for Evidence
 - Maintenance of status
 - Particular concern: CPT & OPT employment and status violations
- Impact New Form I-539:
 - Increased costs
 - New Biometrics requirements
 - Timing/processing times

Questions?


