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?