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What to Know About Lawful Status, Periods of Authorized Stay, and Unlawful Presence



Lawful status, period of authorized stay, and unlawful presence are closely related immigration concepts, but each has a distinct legal meaning that can directly impact your immigration case. Contact your immigration attorney for more information about your specific case.

What Is Lawful Status?

Lawful status means you have permission to be in the U.S. under a specific immigration category for a set purpose and a certain period of time. For example, F-1 status is for students and B-2 status is for tourists.

Lawful status is documented in the form of an I-94, which is an official record created by Customs and Border Protection (CBP), or the United States Citizenship and Immigration Services (USCIS). The I-94 contains important information, including the noncitizen's status, class of admission, and how long they are allowed to remain in the United States. You may not receive a physical copy of the I-94, but an electronic record is available at i94.cbp.dhs.gov.

If your I-94 has an expiration date, you must either leave the U.S. or apply for an extension or change of status before then. You also must follow all rules for your specific immigration category to keep your lawful status. For example, an individual in H-4 status can only work if they have a valid Employment Authorization Document (EAD). If they work without permission, they have violated their status and may lose their lawful status.



What is a Period of Authorized Stay?

Sometimes, you may be legally allowed to stay in the United States even if your lawful status has expired. This is called a period of authorized stay. For example, if you apply to extend or change your status before your I-94 expires, you may remain in the United States while you wait for a decision on your case. Similarly, individuals with pending asylum or green card applications may also be in a period of authorized stay.

Important: Being in a period of authorized stay is not the same as being in lawful status, but it may help you avoid accruing unlawful presence while your application is pending. Recently, ICE has arrested individuals in a period of authorized stay, even those with work authorization. As this is a new government practice, it is important to speak to your attorney about your situation.



What is Unlawful Presence?

Unlawful presence generally begins when your permission to stay in the United States ends and you do not have a pending immigration application or another legal basis to remain.

Too much unlawful presence can lead to serious consequences. In some cases, it can prevent you from returning to the United States for 3 or 10 years after you leave. Contact your immigration attorney for support.

This flyer is intended for general information purposes only and does not constitute legal advice. You should not act or rely on any information in this flyer without seeking the advice of a competent, licensed immigration attorney.