

How to Stay in the United States Beyond Six-Year H-1B Limit

GENERALLY, a person can be in H-1B status for only six years. Even if an H-1B holder switches employers, the maximum time allowed is six years. Following the six year period, the H-1B holder must spend 365 days outside the U.S. before being eligible for another six year maximum term.

Recapturing Time Spent Outside the U.S.

Questions arise when a person in H-1B departs the U.S. Does the time spent outside the U.S. count toward the 6 year period? Could time spent outside the U.S. be "recaptured" and used to extend and H-1B holders stay beyond 6 years?

USCIS regulations states that an H-1B alien who has spent six years in the United States may not seek extension, change status, or be readmitted to the United States unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

USCIS issued a memorandum on October 21, 2005 states that any absence outside the U.S. of 24 hours or more may be recaptured. A request for recapture of time must be supported by independent documentary evidence (e.g., passport stamps, I-94s, plane tickets, etc.) and should contain a chart of the person's absences from the U.S. and a statement requesting recapture. The burden of the proof is on the petitioning employer.

Extensions under AC 21

In 2002, Congress passed a law that enables H-1B holders to remain in the U.S. for longer than 6 years. According to this law, as long as 365 days have passed since the filing of a labor certification or I-140 petition, an H-1B holder can extend status indefinitely, one year at a time. Furthermore, if an I-140 petition for the H-1B holder has been approved and waiting current priority date, three-year extensions are allowed.

AC 21 is very beneficial for those who fall under retrogressed employment preference categories.

Temporarily Departing the U.S.

If the H-1B holder so desires, he or she can depart from the U.S., live abroad for 365 days, and thereafter reenter the U.S. By doing this, he or she will be entitled to another initial three years, extendible to six years.

Switching to Another Non-Immigrant Category

Another option is to extend allowable legal stay in the U.S. is for an H-B holder to switch to another non-immigrant category, like an E treaty investor or E employee, a student visa or a J training visa. We encourage H1B holders facing 6th year issues to seek consultation regarding their non-immigrant options.

This article does not constitute legal advice but we hope it has been helpful in presenting different options and strategies to legally stay in the United States. If you have any questions about your particular situation, contact us and let us assist you in preparing and processing your case.

The Law Offices of Darren B. Silver & Associates concentrates exclusively to the practice of immigration and naturalization law. Mr. Silver has an extensive knowledge of all aspects of immigration law and procedures. His career in immigration includes a prior position as an Adjudications Officer for INS in Los Angeles, California. Mr. Silver served the INS for a period of three years, from 1992 through 1995. While working for INS, Mr. Silver assisted in recommending policy decisions, interviewing aliens for status changes and reviewed naturalization appeals.

The experience of working inside the INS has allowed Mr. Silver significant insight into maneuvering through the complex maze which makes up the Immigration Service. Mr. Silver formed the Law Offices of Darren B. Silver in 1996 and has maintained one of the most successful immigration practices in the country. Mr. Silver is an active member of the California Bar, the Los Angeles County Bar Association immigration section, American Bar Association and the American Immigration Lawyers Association (AILA).

Please contact the office for a [free consultation](#)

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