TRAVEL IN H-1B STATUS (2009)

Documentation Required
H-1B employees who travel abroad should carry the original H-1B approval notice (USCIS Form I-797) from their current employer, despite the fact that Form I-797 states that the employer should retain the top portion of the form. A current letter from the faculty sponsor or department verifying continued employment can also help facilitate re-entry to the U.S. In the alternative, a copy of the most recent pay advice could serve the same purpose. If the H-1B worker has changed employers since first entering the U.S. and has a valid visa annotated for the previous employer, he/she may re-enter the U.S. using that visa, provided that he/she presents a valid H-1B approval notice for the new employer upon re-entering the U.S.

If an H-1B worker is traveling abroad only temporarily (for a conference or short visit), his/her dependents may remain in the U.S. in H-4 status.

Valid Visa Required unless Visa “Automatically Revalidated”
An H-1B worker who is not visa exempt must have a valid H-1B visa to re-enter the United States after a trip abroad unless his or her visa is considered “automatically revalidated.”

- “Automatic Revalidation of Visa:” Travel to Canada or Mexico for 30 days or less: An H-1B worker may re-enter the U.S. after a trip solely to Canada or Mexico that lasts no more than 30 days without obtaining a new H-1B visa, as long as the original I-797 H-1B Approval Notice is still valid and the traveler has his or her entry Form I-94. The entry Form I-94 does not need to be valid, if there is an extension I-94 on the bottom of the I-797 H-1B Approval Notice.
  
- PLEASE NOTE: If the employee applies for a new visa while in Canada or Mexico, this provision does NOT apply. If the new visa is not issued at the U.S. Consulate in Canada or Mexico, the H-1B employee will have to return to his or her home country to reapply for a visa.
  
- PLEASE NOTE: Persons who are citizens or nationals from countries that the United States has labeled as “state sponsors of terrorism” may NOT use the automatic revalidation provision.

Travel While Extension of H-1B Approval is Pending
An employee who already holds H-1B status is not prohibited from traveling abroad while an extension of stay is pending with the USCIS provided that he/she returns to the U.S. prior to the expiration of the current H-1B approval.

If the employee can not avoid traveling abroad during this period, he/she will be forced to stay abroad until the H-1B extension is approved and can be sent to him or her, in order to apply for a new visa or, if visa exempt, be readmitted to the U.S. in H-1B status.

Travel While Change of Status to H-1B is Pending
A non-immigrant who travels abroad while an application for change of status to H-1B is pending has abandoned the change of status portion of the petition.

- If the H-1B petition is later approved by the USCIS and the foreign national is still abroad, he/she can apply for H-1B status at a U.S. consulate and then enter the U.S. in H-1B status.
- If a foreign national who departed the U.S. while an application for change to H-1B status was pending re-enters the U.S. in another non-immigrant category, he/she is not considered to be in H-1B status even if the USCIS subsequently approves the change of status request that was pending at the time of the person’s departure. In this case, the foreign national would have to exit the U.S. with the approval notice, obtain an H-1B visa at a U.S. consulate office, and then re-enter the U.S., or have the employer file a new Form I-129 requesting a change of status once more.

Travel under the H-1B “Portability” Provisions
An H-1B applicant for admission to the U.S. who is no longer working for the original employer but who is working for a new employer which has filed an H-1B petition, is admissible to the U.S. at a port of entry as long as these conditions are met:

- The period of admission is limited “to the validity of the previous H-1B petition, plus ten days.”
- The applicant is in possession of Form I-797 from the previous employer.
- The applicant has a valid H-1B visa, unless visa-exempt.
- The applicant carries Form I-797 Receipt Notice showing that a petition has been filed by the new employer.