

Advice for Snowbirds and Visitors Trapped in the US During COVID-19 Pandemic

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With the recent border closures and travel restrictions in place due to the COVID-19 pandemic, many snowbirds, B-1 (business visitors), and B-2 (visitors for pleasure) non-immigrant status holders have found themselves unable to leave the US.

Depending on where an individual resides permanently, traveling home from the US may be extremely difficult or impossible at this time. For many, staying in place in the US is either mandatory or highly recommended for public safety reasons.

If I entered the US as a visitor, how long may I stay in the US?

Many are under the impression that individuals are limited to six months or 183 days per year. While this is generally true, there are certainly exceptions to this rule, especially during these unprecedented times.

In this regard, there are two controlling concepts to keep in mind:

Generally, those entering the US as a visitor (B-1 or B-2) are granted up to six months per stay; and
Each entry to the US is in the authoritative discretion of US Customs and Border Protection (“**CBP**”).

Although persons entering the US as a visitor (B-1 or B-2) may be granted up to six months of stay when entering the US, there is no specific limit on how many days or months an individual could be in B-2 status in the US on an annual basis. For example, if a person enters the US on January 1, 2020, is granted six months of stay by CBP, and leaves the US by the end of June, there is no specific regulatory provision that would keep CBP from granting an additional six months of B-2 status to the individual upon a subsequent entry to the US a few weeks later.

Prime examples of individuals in B-2 status for more than six months per year includes cohabiting partners, extended family members, and other household members of another alien in long-term non-immigrant status who are not eligible for derivative status under that alien’s visa classification. These individuals are often granted B-2 status for up to a year period by CBP at the port-of entry and are eligible to extend their B-2 status, assuming they are eligible to evidence their ties to home country.

How do I know when my B-1 or B-2 status expires?

It is the responsibility of every visitor to the US to know the expiration of their permitted stay in the US. To determine this period of permitted stay, each traveler should pull their I-94 Arrival Record from the US Department of State Arrival System (<https://i94.cbp.dhs.gov/I94/#/home>). In the event of a discrepancy between the I-94 Arrival Record and any expiration date stamped in the individual’s passport when entering the US, both USCIS and CBP rely upon the I-94 Arrival Record.

What do I do if my B-1 or B-2 status expires before international travel becomes possible?

If our clients need to remain in the US beyond the expiration of their current periods of permitted stay (as indicated on the I-94 Arrival Record), we generally request an extension of stay in B-1 or B-2 (depending on how they entered the US) from US Citizenship and Immigration Services (“**USCIS**”).

When requesting this extension of visitor status, the Applicant must prove that they are eligible for such an extension, based on the following eligibility criteria:

Nature of Activities – evidencing that the Applicant will only be performing activities specifically permitted as a visitor;

Temporary Intent/Ties to Home Country – evidencing that the Applicant’s intent in the US is temporary and they have significant ties to home country; and

Reason for the Extension Request – evidencing that the request for extension has a valid purpose and will not run the Applicant afoul of criterion 1 and 2 above.

Our firm stands at the ready to assist clients, current and new, to extend their non-immigrant status or otherwise ensure compliance with immigration and tax requirements and strategies during these difficult times.