BEYOND APPROVAL: WHAT TO KNOW AFTER RECEIVING YOUR H-1B OR O-1A VISA



Cornell Law School
Path2Papers Project

PRESIDENTS' ALLIANCE
ON HIGHER EDUCATION AND IMMIGRATION

ABOUT THE PRESIDENTS' ALLIANCE

Founded in 2017, the **Presidents' Alliance on Higher Education and Immigration** is a nonpartisan, nonprofit organization that mobilizes college and university leaders to address immigration issues impacting students, campuses, and communities. We believe that a central mission of higher education is to educate and equip individuals from all backgrounds to unleash their talent and potential. Our **Legal Pathways that Work initiative** aims to increase access to employment-based immigration pathways for college and university students in temporary or precarious immigration statuses.

ABOUT CORNELL LAW SCHOOL'S PATH2PAPERS

Cornell Law School's Path2Papers (P2P) is a project that helps Dreamers pursue work visas and other pathways to legal permanent residency. Housed at Cornell Law School, P2P is one of the only programs in the country that combines experience in employer representation with expertise in evaluating immigration options for Dreamers.

ABOUT THE HIGHER ED IMMIGRATION PORTAL

The **Higher Ed Immigration Portal** is an initiative of the Presidents' Alliance on Higher Education and Immigration. The Portal integrates data, policies, and resources about DACA and undocumented, other immigrant, international, and refugee students to support immigration reform and federal policymaking, fuel change at the state and campus level, and build a diverse movement of partners and stakeholders advocating for these students.

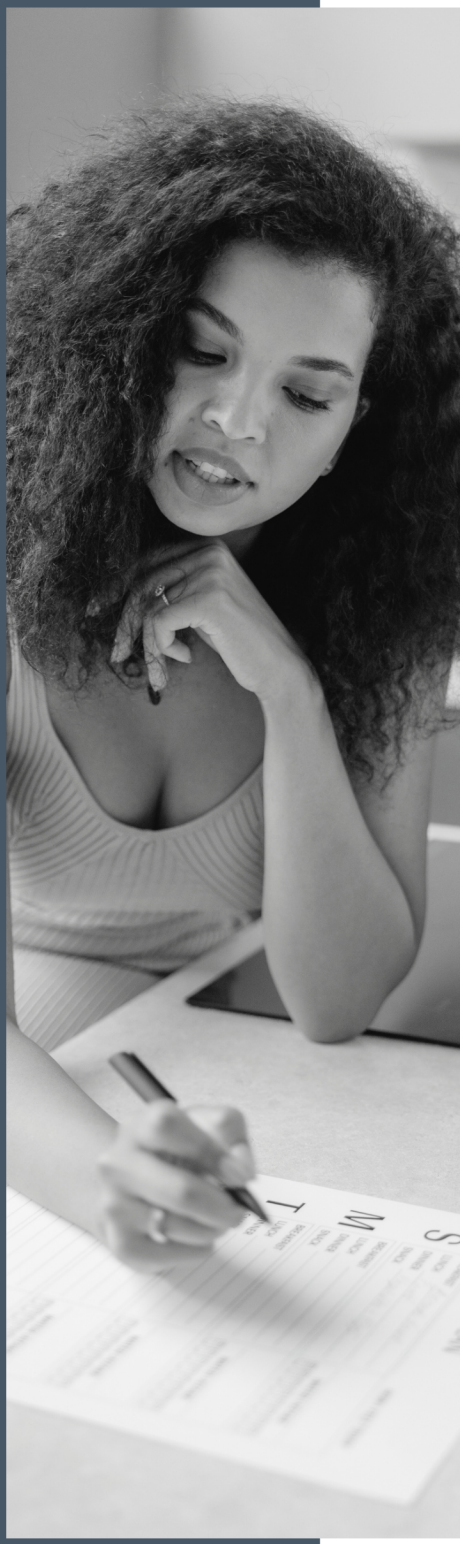
SUGGESTED CITATION

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DISCLAIMER

This guide is intended to provide general information and practical considerations for individuals working in the U.S. non-profit sector under H-1B or O-1A visa status, and does not constitute legal advice. Individuals should consult with a qualified immigration attorney and tax professional for advice specific to their circumstances.

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PURPOSE OF THE GUIDE

This guide is designed to support professionals who recently obtained an H-1B or O-1A visa after consular processing. It may be especially helpful for individuals employed by institutions or organizations that do not have an established infrastructure for supporting H-1B or O-1A visa holders, such as those outside of traditional academic settings, and who may not have access to ongoing compliance guidance, institutional support, or clear channels of communication. The guide offers practical information and key considerations on topics such as employment restrictions, re-entry procedures, international travel, taxes, and health insurance. The content is tailored to individuals working at nonprofits or who are self-employed.

PART 1: IMMEDIATE STEPS UPON RE-ENTRY TO THE U.S.

This section outlines what H-1B and O-1A visa holders should do immediately after returning to the U.S. to ensure continued compliance with immigration and employment requirements.

Document Collection and Notifications

- Download your electronic I-94 Arrival/Departure Record from the Custom and Border Protection (CBP) I-94 website. The I-94 is a U.S. government document that records the arrival and departure of non-U.S. citizens entering the country. This is critical to confirm legal entry and track your duration of stay expiration date.
- Submit copies to:
  - Your immigration attorney
  - Your employer's Human Resources (HR) department (or its equivalent)
  - A trusted friend or relative for backup
- Send a picture of your visa stamp (H-1B or O-1A) to your attorney
- Retain backup copies (digital & hard copy)
  - Save scans of your passport bio page, visa stamp, and I-94 in a cloud-based folder
- If any discrepancies appear on your I-94 or visa stamp, contact the CBP Deferred Inspection Office immediately to correct them.
  - Some of these discrepancies include a misspelled name, incorrect admission date, missing immigration officer signature, incorrect employer listed, and errors in the order of family and given names, among others.

Legal Compliance & Employer Communication

- Submit your I-94 to your employer/HR department
- Understand the "Admit Until Date" on your I-94
  - May differ from visa or petition end date
  - Must depart or extend status before this date

- Discuss your visa expiration date and duration of stay with your attorney and employer
  - Ask about timeline for extension, green card sponsorship, and travel risks
  - Employers may also be unfamiliar with critical timelines related to status extension, green card sponsorship, or travel risks. We encourage both employees and employers to review this guide together and consult with the immigration attorney who handled the visa sponsorship to ensure ongoing compliance and informed planning.
- Meet with your immigration attorney- the person who handled the employment-based visa
  - Create a long-term action plan, whether it involves renewal, a change of status, or applying for permanent residency. See Part 4 below for more information on long-term planning.

Change of Address Requirements

- All noncitizens file Form AR-11 Change of Address with U.S. Citizenship and Immigration Services (USCIS) within 10 days of any move
  - **Change of Address Online**
- Update your address with:
  - Your employer's HR system
  - DMV (for driver's license or state ID)
  - Bank and tax records
- If you previously held DACA, some attorneys recommend sending proof of your new status to USCIS via a formal letter for recordkeeping.

Travel Awareness & Re-Entry Planning

- Avoid international travel without first consulting an attorney
- Ensure you have:
  - A valid visa stamp
  - Letter of employment and recent pay stubs
  - Copy of I-797 approval notice, which should have been sent to you or your attorney when your H-1B or O-1 visa was approved by USCIS
  - Passport that is valid at least 6 months beyond the duration of your H-1B or O-1 status
- Set calendar reminders 90, 60, and 30 days before your I-94 or visa expiration.

Emergency Preparedness

- Save your immigration attorney's contact information in your phone
- Share important documents with a trusted emergency contact
- Carry digital and/or printed copies of your documents when traveling domestically or internationally (in case you're asked to show proof of status).



PART 2: EMPLOYMENT LIMITATIONS AND CONSIDERATIONS

This section outlines employment limitations and restrictions, eligibility for additional employment and reimbursements, and key factors to consider while on an H-1B or O-1A visa to ensure continued compliance with employment requirements.

For H-1B Holders

- Employer-Specific Authorization
  - You are only authorized to work for the specific employer that petitioned for your H-1B visa and whose name appears on your approval notice (Form I-797)
  - You cannot receive compensation (wages, stipends, consulting fees, honoraria, etc.) from any other entity unless that entity has also filed a concurrent H-1B petition on your behalf that has been approved by USCIS. Side gigs are prohibited.
- Prohibition on Honoraria
  - H-1B holders are generally not eligible to receive honoraria for guest lectures, conference presentations, panels, or similar academic/professional events.
- Permissible Unpaid Activities
  - You may engage in **unpaid** professional activities such as:
    - Presenting at academic or professional conferences
    - Guest lecturing
    - Participating in workshops or events
- Reimbursements: Although you cannot receive compensation for these activities, reimbursements for travel-related expenses (e.g. airfare, lodging, meals) are generally allowed. Always consult an attorney, HR, or your sponsoring department before participating in outside engagements.

For O-1A Holders

- Activity Flexibility (with limits)
  - O-1A status is tied to the specific itinerary of events, employer(s), and types of activities listed in the original O-1 petition filed on your behalf. You may only be paid for services and engagements that were included in the petition or that have been added through a formal amendment or new petition approved by USCIS.
  - If you are working with multiple clients or venues, your O-1 petition must generally reflect this, typically through:
    - An agent-based petition, or
    - Inclusion of detailed itineraries and contracts
  - Payment from third parties (e.g. a university, publisher, conference) must generally go through a petitioner or through an approved LLC acting as your agent or employer, if listed in your original petition.

- Restrictions on Unlisted Activities
  - You generally cannot accept:
    - New paid engagements not listed in the O-1 petition without filing an amendment
    - Honoraria for activities outside the scope of your petition
    - Example: If your O-1 was granted for work as a researcher with University A, you may not accept a paid speaking engagement at University B unless it was included in the original petition or added through amendment.

- Reimbursements Permitted
  - You may receive reimbursements for incidental expenses like transportation, meals, and lodging related to professional appearances.
  - These must be non-compensatory in nature (i.e., not payment for services rendered).
  - Honoraria not allowed

- Public Assistance Restrictions (See part 5 for additional details)
  - Most temporary visa holders are barred from receiving federal public benefits, and **receipt of certain types of federal public benefits** (e.g., food stamps and other **means-tested benefits)** could result in a future finding of inadmissibility (i.e., an immigration violation that could bar re-entry).
  - Visa holders should understand what types of benefits could trigger inadmissibility.



PART 3: TAXES

This section provides an informational overview of key tax compliance considerations for H-1B and O-1A visa holders. Please note that this information does not constitute tax advice; the authors of this guide are not tax professionals. We recommend you consult a qualified accountant or tax advisor for specific guidance.

Residency & Forms for Both H-1B and O-1A Holders

Residency Tests to Know

Visa holders are treated as a nonresident alien for tax purposes and pay taxes on all US income, unless a Tax Treaty applies. You file federal tax form 1040NR unless you meet the test below. You are also subject to state and local income taxes.

- Substantial Presence Test (SPT): Used to determine if you're a "resident alien" for federal tax purposes.
  - If you've been in the U.S. for over 183 days (with a specific formula), you may be treated as a resident and taxed on worldwide income.
    - H-1B holders
      - If you are transitioning to H-1B status from another U.S. immigration "status," such as DACA, F-1/OPT or J-1 —you may already be considered a resident for tax purposes under IRS rules.
      - Tax residency status can depend on your prior time in the U.S. and the specific visa held, so it's important to review your individual situation or consult with a tax professional.
    - O-1A holders follow the same SPT and look at prior visits to the US.

State Tax Residency Rules Differ

- Some states consider you a resident if you spend more than 183 days there, regardless of federal status. Every state has different residency rules.
- Check with a tax advisor or state Department of Revenue site to confirm.

For H-1B Holders

Common Forms You'll Receive:

- W-2 from your employer (most common)
- Form 1042-S if you received a tax treaty benefit
- Note: If you are an H-1B holder and receive Form 1099 for payment as a contractor, follow up with your HR department, as this is likely an error.

Deductions & Credits

- Resident aliens can claim:
  - Standard deduction or itemized deductions
  - Education credits (if applicable)
  - Dependents (must have a social security number(SSN) or obtain an individual taxpayer ID number (ITIN) from the IRS.)
  - Can file jointly with the spouse if the spouse has SSN or ITIN.
- Nonresident aliens:
  - No standard deduction
  - Can only claim itemized deductions (very limited)
  - Cannot file jointly with a spouse unless you elect to be treated as a resident only if you are married to a US citizen or Resident alien.



For O-1A Holders

Tax Treatment is Similar to H-1B

- Subject to federal, state, and local taxes
- Must also determine resident vs. nonresident status using the Substantial Presence Test
- May have additional scrutiny if paid for multiple engagements, track all 1099s and keep LLC income separate from primary income.

Tips for Those with LLCs

- If you're using an LLC to receive payment for permitted engagements:
  - Maintain separate accounts for the LLC
  - Keep detailed records for expenses and income
  - Consider filing Schedule C (Profit or Loss from Business) if treated as a sole proprietorship
  - Consult an accountant familiar with foreign nationals and entertainment/public speaking income.

Helpful Tools and Resources

- **Sprintax** – Tax prep for nonresidents
- **IRS Tax Residency Info**
- **Tax Treaty Tables**

DISCLAIMER

We do not endorse or promote Sprintax or any specific tax preparation service. Any references to Sprintax are provided for informational purposes only. Individuals should conduct their own research and consult a qualified tax professional to determine the best option for their specific needs.





PART 4: PLANNING FOR LAWFUL PERMANENT RESIDENCE

This section outlines key considerations for planning permanent residency in the U.S., including eligibility requirements, application barriers, available green card categories for visa holders, and the risks associated with the 3- or 10-year reentry bar. As always, consult an immigration attorney for personalized guidance.

Overview of Lawful Permanent Residence

Many individuals who obtain a nonimmigrant visa do so with the long-term goal of securing lawful permanent residence (a green card) in the United States. Although the H-1B and O-1 visas do not provide a direct pathway to a green card, holders of these visas can typically adjust their status within the U.S., rather than having to leave the country to complete consular processing abroad. This is made possible by a provision in immigration law known as Section 245(k), which forgives certain prior immigration violations, provided the individual was subsequently admitted to the U.S. in a lawful status such as H-1B or O-1.



Employment-based green cards fall into three primary categories, based on the applicant's qualifications and the nature of the job:

- EB-1: For individuals with extraordinary ability (comparable to O-1 standards), outstanding professors and researchers, or multinational executives and managers. The EB-1 does not require an employer sponsor.
- EB-2: For professionals holding advanced degrees or those with exceptional ability. This requires an employer sponsor and an approved **labor certification (PERM)**, unless the applicant qualifies for a National Interest Waiver (NIW).
- EB-3: For skilled workers, professionals, and other workers. This category requires both an employer sponsor and an approved **labor certification (PERM)**.

Each of these categories has distinct eligibility requirements and different processing timelines. Importantly, the timing of when a person can pursue lawful permanent residence may also depend on whether they are subject to a 3- or 10-year bar from reentry, as explained in the following sections.

Applying Before the 3- or 10-year Bar

As noted above, being eligible for lawful permanent residence is only one part of the process. Another critical step is determining the appropriate timing for pursuing permanent residence. Individuals who were admitted to the U.S. in H-1B or O-1 status without triggering the 3- or 10-year unlawful presence bars may begin the green card process immediately upon admission.

However, individuals who have triggered these bars must consider one of the following options based on their specific circumstances:

- Contest the finding with USCIS and argue that the 3- or 10-year bar does not apply.
  - For more details on this approach, including templates and guidance, refer to Path2Papers' resource **Adjustment of Status Guide for Former DACA Beneficiaries with a D3 Waiver Due to a 3- or 10-year Bar.**
  - Individuals considering this legal theory should avoid traveling abroad on their H-1B or O-1 visa, as departing the U.S. on such a visa may undermine their claim.
- Apply for a waiver by submitting Form I-601.
  - The I-601 waiver applies specifically to applications for lawful permanent residence and is distinct from the D3 waiver for nonimmigrant visas. To qualify for an I-601 waiver, the applicant must show that a U.S. citizen or lawful permanent resident spouse or parent would suffer extreme hardship if the applicant were required to remain outside the United States for 3 or 10 years.
- Wait out the required 3- or 10-year period before pursuing permanent residence.

- People who triggered the 3- or 10-year unlawful presence bars and are not eligible for a waiver can wait out the required time either inside or outside the U.S. before applying for permanent residence.
- O-1 visa holders can keep renewing their status as long as they stay eligible.
- H-1B visa holders need to plan carefully, as H-1B status is generally limited to 6 years (3 years plus a renewal), with some exceptions for extensions beyond the 6th year.

To learn more about these strategies, read **Immigration Options After a DACA Beneficiary Returns to the U.S. with an H-1B and D3 Waiver**.





PART 5: DEPENDENTS, HEALTH AND WELFARE BENEFITS

This section provides an overview of health insurance, dependents and health and welfare benefits, other dependent-related considerations, and additional resources as they relate to the visa holders.

Dependents

Eligibility

Your legally married spouse and/or unmarried child(ren) under the age of 21 may be eligible for dependent status throughout the duration of your H-1B or O-1A. Eligible family members may apply for either H-4 status (dependent of an H-1B) or O-3 status (dependent of an O-1A). You should speak with your immigration attorney should you have questions about eligible status for dependent family member(s).

Ability to Study vs. Work

Both H-4s and O-3s are permitted to study in the US, from kindergarten all the way through postsecondary levels. However, H-4s are only permitted to work if they qualify and receive an Employment Authorization Document (EAD) from USCIS. To qualify, H-4s must either:

- Be a beneficiary of an Adjustment of Status (I-485) application.
- Be the spouse of someone in H-1B status who is the beneficiary of an approved I-140 petition.
- Be the spouse of someone in H-1B status who has been extended beyond the maximum of six years due to an employment-based green card application.

Family members in O-3 status are not authorized to work or receive U.S.-sourced income.

Health Insurance

Is Health Insurance Required?

As a new H-1B or O-1 visa holder, it is important to consider health insurance coverage. Following the **Patient Protection and Affordable Care Act (ACA)**, certain non-citizens may incur a tax penalty if not enrolled in an ACA-compliant health insurance plan by a certain date in the current tax year. Whether this applies to you will depend on whether or not you are considered a resident alien for tax purposes. Please refer to Part 3 above for important considerations, and refer to a tax advisor or your state's Department of Revenue for additional details. According to the National Immigration Law Center's (NILC) **explainer**, the only noncitizens eligible for premium tax credits under the ACA will be:

- LPRs
- Cuban and Haitian Entrants
- CoFA residents

These changes will take effect beginning December 31, 2026.

Where to Obtain Health Insurance Coverage

Employer Sponsored

Many employers provide health insurance coverage as part of their benefits package. Be sure to check in with your employer and their human resources department for more details. Per the U.S. Department of Labor, "The employer must offer benefits to the H-1B workers on the same basis, and in accordance with the same criteria, as the benefits the employer provides to similarly employed U.S. workers," such as health insurance.



Health Insurance Marketplace

If your employer does not provide health insurance coverage, or you would like to consider other options, you might consider coverage through the **Health Insurance Marketplace**. Generally, "lawfully present immigrants," including those with certain non-immigrant statuses on worker visas, have access to Marketplace coverage. You can learn more about Marketplace health coverage for lawfully present immigrants at **HealthCare.gov.** According to the NILC **explainer**, lawfully present immigrants earning at least 100% of the federal poverty level may still enroll in unsubsidized coverage on the ACA health insurance marketplaces. Those who earn less than 100% of the federal policy level will not have access.

Short-Term Coverage

In the event you desire or require coverage before the enrollment period begins for a plan via your employer or the marketplace, you might consider temporary, short-term coverage. There are several companies offering plans tailored to those with temporary visas, including those listed on University of Cincinnati's International Services page under "**Other insurance plans**." It is important to carefully review these offerings to determine what makes the most sense for you, any potential dependents, and your health needs.



PART 6: OTHER RESOURCES

You may have additional questions related to your new status. As always, it is recommended to consult with a qualified immigration attorney. Below, you will also find additional links to resources related to these topics.

Higher Education Institutional Websites

The field of higher education is experienced in hiring and hosting international faculty and staff via H-1B and O-1 sponsorship. Many higher education institutions, like the ones linked below, provide additional details on items to consider for maintaining H-1B or O-1 status. Please note, some items are specific to the higher education field and/or to the particular institution:

H-1B

- ASU - International Student & Scholars Center - H-1B Temporary Specialty Occupation

O-1

- Harvard - International Office - O-1 Visa

Other Helpful Websites

- USCIS - FAQ for Individuals in H-1B Nonimmigrant Status
- USCIS - O-1 Visa: Individuals with Extraordinary Ability or Achievement
- Sprintax - Filing taxes on H-1B visa - the Ultimate guide

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