

Can you change your tourist visa into a student or work visa once you've landed in the US?

Synopsis

A change of status means a change in your intention. For example, when you obtain a visa and enter the USA, you would have expressed to the US government your intention of a brief visit. The change in such intention can be construed to be deliberate and preconceived. If such preconception is deemed misleading, you could be barred from entering the US for ever.



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The answer is yes, you can, but should you?

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Typically, when you obtain a visitor visa (for business or tourism), you inform the consulate that the duration of your visit will be short, no more than six months. Then, when you arrive at the US port of entry, you again inform the interviewing officer the same. The US State Department (DOS) holds that there is a presumption of misrepresentation if you try to apply for a change of status within 90 days of entry into the US. Further, the burden lies on you to prove that you did not misrepresent your true intention when you obtained the visa or when you were interviewed at the port of entry.

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That means, even if you have successfully obtained a change of status after having entered the US, if you travel out, you may have to explain and prove to the consulate why you changed your mind. Note also that the 90-day rule is not a magic marker. Your intention can be questioned even beyond 90 days.

Activities that May Indicate a Possible Violation of Status or Conduct Inconsistent with Status

The DOS notes the following objectionable activities as examples of violation of the 90-day rule:

- Engaging in unauthorized employment on B1/B2 nonimmigrant status
- Enrolling in a course of study, if such study is not authorized for that nonimmigrant classification (e.g., B1/B2 status)
- Marrying a United States citizen or Green Card holder and taking up residence in the United States. To establish that an applicant took up residence in the United States before/after marriage, the consulate may consider whether: you have signed a long-term lease or a mortgage; there are any bills in your name; you have obtained a local driver's license; and any other evidence that indicates you have taken up residence in the United States)
- Undertaking any other activity for which a change of status would be required without first applying for and receiving a change, such as starting an unauthorized education program without first obtaining a student status.

Inconsistent Conduct After 90 Days

If you violate your status or engage in conduct inconsistent with your status more than 90 days after admission to the United States, no automatic presumption of willful misrepresentation arises. However, the consulate can still examine the totality of your circumstances to assess if you have made a misrepresentation.

Legal Elements of the Misrepresentation Bar

To permanently bar a person from entering the US, the government agencies evaluate the following elements:

- You affirmatively made a misrepresentation such as in an oral interview, in written applications, or by submitting evidence containing false information. Note that silence or the failure to volunteer information does not in itself constitute a misrepresentation under this set of laws.
- Misrepresentation Must Have Been Before a U.S. Official, usually either a consular officer or a Department of Homeland Security officer at the port of entry.
- The misrepresentation was willfully made. The term "willfully" means knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.
- The fact misrepresented is material, that is, relevant to your application or the agencies' examination of the full facts.
- You must have made the misrepresentation on your own visa application or application for admission to the United States (not someone else's), including any information provided in support of the application. For assisting someone else in making a misrepresentation, another set of laws could be applicable.

- You could be held responsible for misrepresentations made by your agent (such as a travel agent) or lawyer if you were aware of it.
- The applicant by using fraud or misrepresentation
- You sought to procure or procured a visa, other documentation, or admission into the United States. You are not required to have been successful; even an attempt is sufficient to complete the act of misrepresentation.

Note that a timely retraction could protect you from the worst consequences of a misrepresentation. Whether a retraction is timely depends on the circumstances of the case. Generally speaking, a retraction is timely if made at the first opportunity and before the conclusion of the same proceeding during which the misrepresentation was made.

Thus, while a status change is a possible option, it may not be the most appropriate one. Departing the US to apply for a new visa for the desired activity may be the best course of action in many, if not most, cases.

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