

Will your B-1 B-2 visas get canceled at the airport?

Synopsis

To protect yourselves, carry evidence that your extension application was timely filed and you left because you had an urgent need to do so. Also, take a screenshot or printout of the FAQ on the CBP website: "How can I extend my stay while in the United States?"



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We have received anecdotal reports that the US Customs and Border Protection (CBP) is canceling the tourist or business visas of those people who during an earlier visit had to file for extensions of stay while in the United States. Even where visas are not canceled, many of such people are being delayed at the ports for lengthy questioning in a process called "secondary inspection." Not only is this risk and delay fundamentally unfair, but it is also based upon a misinterpretation of the law and the policy.

At the heart of the legal misinterpretation lies section 222 (g) of the Immigration and Nationality Act that punishes people who overstay their allotted period of time in the United States. Simultaneously, the laws also permit requests for extensions of that stay that are filed with the USCIS before the expiration of the current status. These reported problems have arisen because section 222(g) is being applied differently by the three agencies directly charged with its interpretation and application: the US Department of State (DOS), USCIS, and CBP.

The roles and responsibilities of the three agencies are different and affect everyone who comes to the USA. The DOS, acting through its consulates, grants visas - the stamp on your passport. Once you arrive at a US entry point (airport or port), CBP examines your admissibility and decides the period of your stay. If you need any extensions of your stay while within the USA, you apply to the USCIS, not CBP.

Each has its own interpretation of Section 222(g), with the CBP being obviously incorrect. A reasonable interpretation normally advanced by the USCIS and DOS is that the law permits legal extensions within the United States if they are timely filed. During the Covid 19 times, it became impossible for most visitors to leave the United States within their allocated times. They, accordingly, applied for extensions of their stay, a legal and accepted procedure permitted by the laws as well as policy for decades. The CBP is holding these extension requests to be "illegal stay," when they are denied or when an applicant leaves the USA without waiting for adjudication.

To protect yourselves, we recommend you carry evidence that your extension application was timely filed and you left because you had an urgent need to do so. Also, take a screenshot or printout of the FAQ on the CBP website: "How can I extend my stay while in the United States?"

If you are eligible to extend your authorized period of stay based on your class of admission, you will need to file an Application to Extend/Change Nonimmigrant Status (I-539 Form) with U.S. Citizenship and Immigration Services (USCIS). You can find additional information at www.uscis.gov.”

The CBP must revisit its policy. The conduct of an applicant leaving even before adjudication is laudable, not punishable. They are acting in utmost good faith complying with every immigration law.

If you have any other visa/immigration queries, write to us at nri.economictimes@gmail.com

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