

AILA CBP Liaison Practice Pointer: Automatic Visa Revalidation

A nonimmigrant alien who has previously presented a visa for admission to the United States may sometimes be readmitted (a) in the same nonimmigrant classification as shown on an expired visa or (b) in a different nonimmigrant classification than shown on an expired or valid visa if a change of status occurred while the individual was in the United States. The nonimmigrant alien's absence from the United States must be limited to 30 days or less, and the individual's travel must be limited to certain geographic locations.

Admission under this procedure is called "automatic visa revalidation." Automatic visa revalidation is applied differently depending on the individual's nonimmigrant visa classification.

Most nonimmigrants may rely on automatic visa revalidation to apply for readmission after travel to a "contiguous territory" (Canada or Mexico). Nonimmigrants in the F or J classification may rely on automatic visa revalidation to apply for readmission after travel to a "contiguous territory" or "adjacent islands other than Cuba." At a minimum, in order to be eligible for this benefit, the nonimmigrant alien must present a valid passport, a valid Form I-94 (Departure Record or Arrival-Departure Record), and either (a) an expired nonimmigrant visa in any classification or (b) a current, valid nonimmigrant visa in any classification.

Documentary and Other Requirements

To rely on automatic visa revalidation, a nonimmigrant alien must meet the following conditions when applying for readmission to the United States:

- Present a Form I-94 showing an unexpired period of initial or extended authorized stay.

If the individual has applied for and received an extension or change of nonimmigrant status while in the United States, the Form I-94 may be attached to, or separated from, a Form I-797, Notice of Action.

- Nonimmigrant aliens (including an accompanying spouse or child) applying to be admitted in F, M, or J classification must also present one of the following documents as applicable:

F or M classification: A valid Form I-20, Certificate of Eligibility for Nonimmigrant, issued by the school at which the Department of Homeland Security has authorized the principal nonimmigrant's attendance.

J classification: A valid Form DS-2019, Certificate of Eligibility for Exchange Visitor Status, issued by the authorized program sponsor showing the unexpired period of stay.

- Present a valid passport with a nonimmigrant visa, whether valid or expired, used for a prior admission to the United States. If the individual's current passport does not contain the nonimmigrant visa, the individual must present a prior passport with a visa.

An expired nonimmigrant visa includes (1) a visa that is no longer valid because of the passage of time and (2) a visa that is no longer valid because the maximum number of entries has been used.

Canadian Citizens and Presentation of a Passport Containing a Visa

Canadian citizens must have been admitted at least once after presentation of a visa to qualify for automatic visa revalidation. Canadian citizens are exempt from the requirement to present a visa for admission to the United States in nonimmigrant classifications other than E or K. If a Canadian citizen is admitted in a nonimmigrant classification that does not require a visa and then changes status to E-1 or E-2 while in the United States, the Canadian citizen may not rely on automatic visa revalidation. Instead, this individual must apply for an E visa before readmission. The Canadian citizen must hold either a valid or an expired visa in the passport at the time of the application for admission in E-1 or E-2 status.

Example #1: A Canadian citizen is admitted to the United States in TN status (a visa exempt classification). The Canadian citizen changes status to E-2 during the period of temporary stay within the United States. This person travels to Canada for a week, does not apply for an E-2 visa, and then asks to return to the United States in E-2 status. The Canadian citizen presents a valid passport and a valid I-94 card, but no visa.

The Canadian citizen is not currently admissible under automatic visa revalidation and must apply for an E-2 visa prior to readmission to the United States.

Example #2: A Canadian citizen is admitted to the United States in TN status (a visa exempt classification). The Canadian citizen changes status to E-2 during the period of temporary stay within the United States. This individual travels to Canada, applies for and is issued an E-2 visa, and presents the visa for admission to the United States in E-2 status. Through the passage of time, the E-2 visa expires even though E-2 status has been extended as reflected on a Form I-94. The Canadian citizen then travels to Canada, does not apply for a new E-2 visa, and applies for readmission to the United States in E-2 status. The Canadian citizen presents a valid passport, a valid, unexpired Form I-94, and the expired E-2 visa.

The Canadian citizen is admissible under automatic visa revalidation.

- Apply for readmission to the United States after an absence of 30 days or less solely to a contiguous territory (Canada or Mexico).

Nonimmigrant aliens (including an accompanying spouse or child) applying to be admitted in the F or J classification may apply for readmission to the United States after an absence of 30 days or less solely to a contiguous territory or adjacent islands other than Cuba:

NOTE: Adjacent islands include Saint Pierre, Miquelon, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

- Apply for readmission after having maintained nonimmigrant status and intend to resume nonimmigrant status at the time of the application for admission.
- Apply for readmission without having applied for a visa while outside of the United States.

NOTE: A nonimmigrant who would otherwise be eligible to reenter the United States pursuant to the authority of automatic revalidation loses eligibility if, while in a contiguous territory or on an adjacent island, the nonimmigrant applied for a new visa and that visa application is pending a decision or has been denied.

- Be admissible without a waiver under 8 U.S.C. §1182(d)(3) (INA § 212(d)(3)).

Actions

Customs and Border Protection may admit the nonimmigrant alien based on the individual's compliance with the above requirements for automatic visa revalidation. The admission may be in the same nonimmigrant classification as shown on the valid Form I-94 that is presented by the nonimmigrant alien and for the time period remaining on the Form I-94.

Under automatic visa revalidation, an expired visa will be considered automatically extended to the date of application for readmission. Further, an expired visa or a valid visa may be converted as necessary to a changed classification.

Exceptions

- Visa Waiver Program

Persons admitted to the United States may be readmitted after a departure to a foreign contiguous territory or adjacent island for the balance of the original Visa Waiver Program admission if otherwise admissible and meeting all conditions of 8 C.F.R. Part 217, with the exception of arrival on a signatory carrier.

➤ Nationals of Iran, Syria, Sudan, and Cuba

Nationals of the countries listed above are not eligible for automatic revalidation of a visa. Such individuals must present a valid visa when making an application for any admission to the United States and may be admitted only in the nonimmigrant classification shown on the visa.

Sources

22 C.F.R. § 41.112(d) (automatic visa revalidation); 9 FAM § 41.112 n.8.1 (eligibility for automatic visa revalidation); 9 FAM § 41.112 n.8.2 (eligibility for automatic revalidation after change of status); 9 FAM § 41.112 n.8.3 (certain aliens excluded from use of automatic revalidation as nationals of countries identified as state sponsors of terrorism); 9 FAM § 41.112 8.4 (expired nonimmigrant visa defined).

8 C.F.R. § 217.3(b) (readmission under the Visa Waiver Program)

8 C.F.R. § 214.1(b) (automatic visa revalidation for F, J, and M nonimmigrants; 8 C.F.R. § 214.1(b)(1) incorrectly refers to 22 C.F.R. § 41.125(f), which no longer exists. The correct reference is to 22 C.F.R. § 41.112(d) covering automatic visa revalidation.)

8 U.S.C. § 1101(b)(5) (INA § 101(b)(5) (defining “adjacent islands”))