A B-2 Bridge Not Too Far: Knowing When and When Not to File a B-2 Bridge Application

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On April 5, 2017, U.S. Citizenship and Immigration Services (USCIS) introduced a policy mandating that persons in B-1 and B-2 visa status, wanting to change to F-1 or M-1 status, must file a "bridge application" to extend B status until the F or M status was approved. The policy was expanded on February 6, 2018 to apply to all non-immigrant categories seeking F or M change of status.[1] The B-2 bridge policy is departure from the prior policy that a timely filed change of status permitted an applicant to remain in the United States without the need to extend the current visa status.

At first blush, the B-2 bridge seems a departure from USCIS' policy that a timely filed change of status application, places the applicant in a period of stay authorized by the Attorney General and lawfully present in the USA, even if the visa status expires while change of status adjudication is pending. Until 2017, USCIS regularly approved changes of status filings for these applications. The B-2 bridge policy is a departure from this established practice.

USCIS' REASONING FOR THE B-2 BRIDGE

The B-2 bridge policy was an unexpected departure from this practice, so it is important to know, if not understand, USCIS' reasoning. It is this:

Under 8 CFR §214.2(b)(7) persons in B-1 or B-2 status cannot engage in a course of study in the USA, and to do so is a violation of status. Prior to enrolling in a course of study, a change of status to F-1 or M-1 is required.

Under 8 CFR §214.2(f)(5) an F-1 student can be admitted into the United States up to 30 days before the F-1 academic program start date. A similar rule applies to M-1 students and is found at 8 CFR §214.2(m)(5). When a B-visitor is filing a change of status to F-1 or M-1 status, this means

[1] www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment/changing-to-a-nonimmigrant-f-or-m-student-status

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there can be no more than a 30-day gap between the B-1/B-2 status end date and the F-1/M-1 start date.

Under 8 CFR §248.1(a), a person seeking a change of status, must be maintaining non-immigrant status. 8 CFR §248.1(c) states that "a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition [for change of status] was filed …."

The general interpretation of 8 CFR §248.1(c) was that the applicant had to request a change of status before the current visa status expired, and if this was done, the applicant was in an authorized period of stay. The period of authorized stay allowed the applicant to remain in the USA until USCIS adjudicated the I-539. In 2017, USCIS decided that the regulation should be interpreted to mean that non-immigrant visa status has to be maintained during review and adjudication of the change of status application. Hence the B-2 Bridge policy and requirement.

B-2 BRIDGE IN A NUTSHELL

The B-2 bridge filing is essentially a series of B-2 extensions of status filings until F/M change of status is granted (or denied). Of course, the applicant has no guarantee of when USCIS's decision will be made, so continual B-2 extensions may need to be filed while the applicant waits for a decision of the F/M change of status request.

So far, so good. Let us pause here to provide some background on international student management systems.

THE INTERNATIONAL STUDENT MANAGEMENT SYSTEM

Background on SEVP and SEVIS

Shortly after the formation of the U.S. Department of Homeland Security (DHS), a decision was made to better control visa issuance, admission and monitoring of international students. The Student & Exchange Visitor Program (SEVP) was created through the joint effort of DHS and the U.S. Department of State (DOS), with responsibilities designated to Immigration & Customs Enforcement (ICE). ICE/SEVP created the Student & Exchange Visitor Information System (SEVIS), an electronic system that manages all foreign students and exchange visitors, and their derivatives.

All educational institutions (primary, secondary, post-secondary) are required to enroll in SEVIS if they want to sponsor international students or exchange visitors. Schools seek SEVP-designation as Exchange Visitor (J-1) sponsors or SEVP-certification as F-1 and/or M-1 student sponsors.[2]

[2] Many institutions of higher education have both designation and certification because they sponsor individuals in F-1/M-1 and J-1 status

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Schools are required to appoint employees as Designated School Officials (PDSO and DSO) for F/M programs, or Responsible Officers (RO or ARO) for J-Exchange Visitor programs. SEVIS system sponsors create a biographical and academic record for each international student, include information about the program of study, including start and end dates, and print out the documents needed for visa issuance or visa status approval. For F-1 and M-1 students, the document needed is an I-20.[3] Students pay a SEVIS fee prior to obtaining an F/M visa or F/M change of status approval. The SEVIS fee is separate from other consulate fees and the I-539 fee.

FORM I-20 ISSUANCE TO INTERNATIONAL STUDENTS

Form I-20 is issued with program start and end dates specific to the course of study.[4] The start date is the date the semester or session begins. The end date is the date the student is expected to graduate from the program and is based on the usual period it takes to complete the program of study (*e.g.*, four years for an undergraduate program). The end date is the last day of the month of the school's graduation commencement ceremonies (usually May).[5]

Students must report to their international DSO within 30 days of the I-20 start date, to avoid having their SEVIS record automatically close. If a SEVIS record closes, the student must begin the process from scratch and repay the SEVIS fee. Therefore, if the student cannot enroll by the I-20 program start date, to keep a SEVIS record active, the DSO changes the start date to the next semester or session start date. This is called "deferring the I-20 start date."

MONITORING SEVIS DEFERMENTS & DOING B-2 BRIDGE FILINGS

Now we return to the B-2 bridge filing and post-filing monitoring requirements.

When the B-visitor has I-20 in hand, an I-539 is filed to request change of status to F-1 or M-1 status. If USCIS does not approve the change of status at least 30 days after the program starts, the DSO defers the I-20 start date to keep the SEVIS record active. A new I-20 is issued to the B-visitor each time this is done. The new I-20 does not have to be sent to USCIS because the agency has direct access to SEVIS and will note the deferment when adjudicating the I-539. If there is no deferment, and the SEVIS record is closed, the I-539 will be denied.

Attorneys have no access to the SEVIS database, so practitioners are "running blind" in regard to the most important system of record that applies to the client's F/M change of status application. Therefore, attorneys must know the basics of what the DSO is doing with their clients' SEVIS record and align the DSO's revisions with continued I-539 filings.

Attorneys must be cognizant of the I-20 program start date and monitor this date to (1) ensure that B-1/B-2 client holds valid visa status or a timely filed extension of status on this date. Attorneys

[3] For exchange visitors (J-1, J-2) the document is a DS-2019. Exchange Visitors are beyond the scope of this practice advisory, but the B-2 Bridge principles apply to this group also.
[4] https://studyinthestates.dhs.gov/sites/default/files/I-20_Active.pdf
[5] In the final session or semester, the DSO shortens the I-20 end date to the actual date of graduation. This is important to bear in mind because the 60-day grace period begins after this date for students who have no requested OPT or a continuation of studies.

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must also keep up with DSO start date deferrals and ensure that their B-1/B-2 client's visa status will not expire before that date. In short, the F-1/M-1 change of status filing is only the beginning of the work. Monitoring the SEVIS record, and filing B-2 bridge extension is an important component of what used to be a relatively straight-forward filing.

B-2 bridge filings should always be done in six-month increments; it is not wise to request less than six months because the date of I-539 adjudication is unknown. If USCIS approves F/M status, the adjudications officer will issue an F/M approval notice. An approval notice will be issued for each B-2 bridge filing also, with the last one showing an end date of the day before the F/M start date.[6]

Finally, when the F/M visa status is approved, the attorney and applicant will receive the usual official and courtesy hard copies of the approval notice. USCIS will also update the SEVIS record with this information. However, sometimes USCIS forgets to update the SEVIS record so the international student should have the hard-copy approval notice in hand when visiting the DSO to confirm enrollment for the semester or session.

THE CURRENT LANDSCAPE: CHANGE OF STATUS IN THE TIME OF COVID

Change of status to F-1 is remarkably complicated. Over the past few years, most applicants would travel for consular processing to have more control over the timing of visa issuance and return to the USA. Change of status last year on Form I-539 was taking well over six months, so the few people using that process tended to be those who faced significant risk traveling due to security delays (such as those from Iran, possibly subject to the Technology Alert List, with pending criminal charges, etc.). But COVID-19 has led to a renewed interest in the I-539, with many people concerned about international travel during a pandemic and U.S. consulates just beginning a "phased reopening" of visa services. This has led us to dust off guidance and discussion from 2018 on maintenance of status and bridge applications.

With most change of status applications in most visa categories, the process is relatively simple - file the change of application before the previous status expires and put a start date for the new status before the previous status expires. Also, be sure to provide evidence of maintenance of the previous status up through the filing date, and of eligibility for the new status. As mentioned above, in Spring 2017, USCIS revised its interpretation of the so-called "30-day rule" such that the student would have to maintain nonimmigrant status up to 30 days before the I-539 is approved. (The I-539 process now often requires one or more "bridge" applications to B-2 for success.[7]

B-2 BRIDGE FOR NONIMMIGRANTS IN OTHER VISA STATUSES

[6] If the last B-2 EOS end date is not the day before the F/M start date, ask USCIS for a corrected approval notice. The international student can begin studies in F/M visa status while USCIS is correcting the B-2 record error.

[7] See, generally this 2011 annotated bibliography on B status for general historical background. https://cbkimmigration.com/wp-content/uploads/2017/07/article-5-b-1-annotated-bibliography.pdf.)

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In February 2018, USCIS extended the B-2 bridge policy to all nonimmigrants, so attorneys must now understand how the bridge filing works when the client is not already in B-1 or B-2 visa status. It is best shown by an example.

Your client is an H-1B worker who is accepted to an MBA program for the Fall 2020 semester. The H-1B worker will probably plan to stop work in July, and the employer will withdraw the H-1B at that time. For class starting August, the H-1B worker will file an I-539 to change to F-1 as early as possible—as soon as the I-20 is ready. Then, a second I-539 to B-2, with a significant filing fee, must be submitted before the H-1B withdrawal or expiration date, whichever is earlier. For approval of F-1 status, the bridge B-2 must also be approved. In our experience, they are usually adjudicated together, but there is a risk that the B-2 could be at a different service center, leading to a further delay.

Other potential challenges include:

- Approval of the B-2 before the F-1 meaning that, if the applicant was in a visa category that permitted study, there is a concern that he or she may have to stop attending classes because B-2 status holders cannot pursue a full time course of study
- Inability to use curricular practical training (CPT) or optional practical training (OPT) if USCIS does not consider the time spent studying while the I-539s are pending as one year enrolled in an academic program (no clear guidance on this when the applicant has no visa status)
- Nonimmigrant intent issues under INA §214b (such as the F-1 student having a pending immigrant visa petition).[8]

UNDERSTANDING THE DSO'S ROLE

It is important to note the role of the F/M sponsor's international student advisor. The Designated School Official (DSO) the DSO is often not an attorney and operates as an adviser specifically on F-1 (or M-1) issues: completing the I-20 form, evaluating student eligibility, recommending practical training or terminations. DSOs are keenly aware of unlawful practice of law, and do not usually assist with a personal application such as the I-539.[9] This creates an unfortunate situation where students cannot get help with the I-539 from the DSO, but cannot afford to hire an attorney.

Some schools have set up group advising sessions with an attorney to mitigate the costs and provide access to legal services for students. Others do not. Your client will often be someone in need of legal expertise, and an attorney knowledgeable about B-2 bridge extension, but will have limited resources to pay for legal fees or filing fees for continual B-2 bridge filings while waiting for F-1 approval. In certain situations, it may be best to return home and consular process, if country borders are open.

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[8] This immigration blog from 2018 does an excellent job of explaining the legal and practical challenges to the bridge application process. (cited with permission): http://blog.cyrusmehta.com/2018/04/beware-the-gap-usciss-policy-changes-cause-headaches-and-confusion-for-f-1-change-of-status-applicants.html

[9] See, for example, this guidance from a university on the change of status process: https://international center.umich.edu/students/change-status.

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