

Out of Status: Re-Entry Alternative to Reinstatement

PLEASE NOTE: It is recommended that individuals who are out of status obtain information from the KGI OISS *and* consult a qualified immigration attorney. KGI OISS will provide interested parties with information concerning the pros and cons of travel and re-entry vs filing a reinstatement based on the party's personal circumstances – it is up to the individual to determine which path is in their best interest, and that individual assumes all liability associated with any decision made. KGI OISS staff will provide regulatory and practice information as it stands at the time of the consult. Due to the fluid nature of governmental interpretation, applicants must understand that Department of State (DOS) and Department of Homeland Security (DHS) reserve the right to change their interpretation of immigration regulation or requirements to establish eligibility for benefits at any time.

What is re-entry?

Re-entry is used by students who have lost their status as an alternative to reinstatement. This is a viable option only if you have been out of status for less than 180 days (see below); students with multiple terminations should also seek counsel prior to pursuing this option (see page 2). You will be issued a new initial entry I-20 and will leave the US and re-enter at one of the borders (for example, Canada or Mexico). When you re-enter, you will be considered a new F-1 student. You will have to be in status for at least 9 months (one academic year) before being eligible for any period of optional Curricular Practical Training (CPT) or Optional Practical Training (OPT).

In August 2018, USCIS issued an updated memo on the accrual of unlawful presence. Under this new policy, you begin accruing unlawful presence the day after your last day of status. If you accrue a total of 180 days of ULP you are subject to a 3 year ban on reentry to the US; if you accrue 1 year or more of ULP, you are subject to a 10 year ban on reentry to the US. It is therefore recommended that you contact a qualified immigration attorney to discuss your options prior to choosing reentry over reinstatement.

What should I expect?

Because you previously lost your status, your immigration record will show a former termination. Be prepared to be asked to go to secondary inspection. You may have to wait several hours to speak to someone. Be prepared to truthfully explain how you lost your status at your former school. It is also ok to tell the officer that your new school's immigration advisor suggested that you attempt re-entry as you have been out of status for a short period of time. **HOWEVER, DO NOT REHEARSE A SCRIPT.** Speak respectfully, naturally, and calmly with the immigration officer. Be honest and smile – a positive attitude is very helpful in these situations. After you speak with the officer, the officer will decide if you will be allowed back into the US.

What should I take with me?

Take the following items with you:

- New I-20
- Valid passport
- Valid visa
- Admission letter
- I-901 Receipt (Proof of SEVIS Fee payment; you may pay your fee at www.fmjfee.com)
- Proof of having paid tuition for your new program, if possible

How early can I enter the US?

You may enter the US up to 30 days before the start of your program (start date listed on I-20). Keep this date in mind. Do not attempt re-entry too early.

Can I be refused entry?

Yes. As mentioned above, you began accruing unlawful presence the day after your last day of status. If you accrue a total of 180 days of ULP you are subject to a 3 year ban on reentry to the US; if you accrue 1 year or more of ULP, you are subject to a 10 year ban on reentry to the US. In addition to these bans, it is important to understand that every time you present yourself for admission, a Customs and Border Protection officer must make the determination that you are eligible for entry. Having said that, the chances of being refused entry are less if you have not been out of status long. We see much success with this option – especially when students have not been terminated long and are honest, calm, and respectful when explaining what happened. If, however, you are not allowed back into the US, you will need to be prepared to return to your home country immediately and attempt to re-enter the US from there.

I have been out of status for more than 180 days. Should I travel and re-enter or file for reinstatement?

You should contact a qualified immigration attorney to discuss your options. KGI will assist you by providing an I-20 for whichever path you choose.

I have previous terminations on my immigration record. Should I travel and re-enter or file for reinstatement?

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