

Avoiding U.S. Immigration Pitfalls



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January 19, 2026 | **IMMIGRATION**

Requesting immigration status at the border or filing for an immigration benefit with the U.S. government has many pitfalls and challenges, many of which can be avoided with careful planning and strategic decision-making. Some of the best ways to avoid immigration pitfalls include the following:

Ask questions, be proactive and plan ahead. Don't be afraid to ask whether and when you might need work authorization. You are 100 per cent better off knowing ahead of time if work authorization is likely required for the activities you plan to undertake in the U.S. than getting stopped by a Customs and Border Protection (CBP) officer and told you need it on your way into an important meeting, trade show, seminar or other business activity.

Proper planning can mean all the difference between approval and having a denial on your immigration record (which can make future entries more difficult). By avoiding an issue, you also might save significant money and time. It's always more expensive to fix an immigration problem than to avoid one.

Choose the best form of benefit — not the one your buddy told you about or AI says you qualify for. One of the worst things you can do is ask AI or a search engine to tell you which immigration benefit is right for you. These

types of technologies are simply not equipped to analyze the unique circumstances and priorities that should be driving such an important decision, and you also cannot rely on them to identify all the options. Since what you get depends very much on what question you ask and the way you ask it, you can end up getting very bad “advice.”

Remember, you don’t know what you don’t know; you are far better off setting up a consultation with an immigration professional who will know what questions to ask and what information is important to drive the best decision for you. Likewise, your buddy who got this or that type of visa might be right that you qualify for the same type of visa or status. But they also might be completely wrong — or there may be a better, cheaper or faster work authorization option available to you.

Understand tax consequences. Certain types of status or a critical mass of time spent in the U.S. come with significant tax consequences. It’s important to understand that you can be a “tax resident” of the U.S. even if you are not a “resident” based on your immigration status. The U.S. Internal Revenue Service (IRS) uses complicated and detailed formulas to determine if and how it can tax foreigners spending time in the U.S., so be sure to speak with a professional accountant or tax professional with cross-border knowledge and experience to understand if there are tax implications to your planned activities in the U.S.

Check your I-94 Arrival/Departure Record every time you enter the U.S., and be prepared to demonstrate status

This is one of the most important things you can do to ensure that you are maintaining status and staying inside with immigration rules and requirements for registering your presence in the U.S., where required. Particularly if you have work authorization, you need to specifically request to be admitted in that work-authorized status when you enter the U.S., and be prepared to demonstrate that you have previously been approved for the work authorization, if asked (such as by showing a visa or stamp in your passport, or an approval notice issued by the government).

If you have been admitted in the wrong status, you must get this corrected immediately — so checking your I-94 record immediately after admission is critical. Check CBP’s “Deferred Inspection” site list online for information on how and where to request an updated I-94 record online if you have been admitted in the wrong status. Failing to correct CBP errors in a timely manner can mean you are not authorized to do the activities intended for your entry, despite having work authorization approved for an alternate status. For example, if you are admitted in B1 or B2 visitor status by the CBP officer adjudicating your request for admission, when you have a separate work authorized status you were previously approved for, you are not authorized to work despite the alternate potential status you could have been admitted in. CBP has made clear in its guidance and policies that the onus to request and know that you have been admitted in the correct status for the purpose of your trip lies squarely on you, the foreigner.

Don’t work without authorization. Working without authorization can have severe consequences. If you think you need work authorization or are concerned you might, speak with a professional who can advise on the risks of continued travel without it, or whether it remains safe to continue to travel without it. If you are told by a CBP officer that you do need work authorization, do not go to a different port of entry and try to gain entry through a different officer. This can result in being banned from entry to the U.S. (for any reason) for five years or longer. No matter how important your trip, it is definitely not worth the risk.

Remain respectful and understand the authority of the visa officer or CBP officer controlling your admission to the U.S. Always remember that the officer you are interviewing with is a human being, too. They can have bad days or bad attitudes, or simply exercise their authority unfairly or unjustly, if they feel you have a bad attitude or there is some other reason to be concerned about admitting you. So leave your bad attitude, prejudices, assumptions and

presumptions at home, and remember that patience, calm and quiet respect for the authority held by the immigration officer you are interviewing with may have a lot to do with your admission to the U.S. Immigration officers are people too, and a modicum of kindness, understanding or patience can go a long way to overcoming a stressful or inflammatory situation, even where the officer is acting poorly or disrespectfully.

Be the bigger person. Choose to remain calm and respectful, and follow the “less is more” principle of discourse if you find yourself in a heated situation due to a bad attitude of the adjudicating officer. Answer the questions asked, but you are probably better off not expressing every opinion you have about the situation in the heat of the moment.

This article was originally published by [Law360 Canada](#), part of LexisNexis Canada Inc.

If you have questions regarding the content of this article or other immigration law topics, do not hesitate to reach out to Lippes Mathias immigration law team members Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com).

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