

Don't Overstay – Just Secure Another Visa

I teach the Business Immigration Law course at the City University of New York – School of Professional Studies in Manhattan. Each semester, among my many students, are community leaders, government officials, paralegals and even other attorneys. They take the course for personal and business fulfillment. Many have no experience in the practice of U.S. immigration laws, before they take the course.

But some of my students have actually worked in the area of U.S. immigration law for at least some period of time, before taking my course, and wish to learn more. Thus, it is always shocking to me when I learn that these students – though possessing some experience in U.S. immigration law before taking my course – do not understand the most basic penalties of the three and ten years bars to re-admission for those foreigners who overstay their authorized period stay in the U.S. What we U.S. immigration law attorneys refer to as the “3- and 10-year bars.”

In fact, some of these students are actually other attorneys. Needless to say, it is my job to educate these individuals, so that they understand how to properly apply the law to their clients and constituency.

Conversely, I am no longer surprised when I meet Filipinos who are *out-of-status* and have no plans to return to The Philippines; or other Filipinos who are still *in-status* but have no intention to file a petition with the U.S. Citizenship and Immigration Service (USCIS) to remain *in-status*. Also, I am not surprised that Filipinos who have entered the U.S. legally, but whose visas and/or I-94 documents have expired, wish to remain in the country.

However, what concerns me is their lack of information regarding the consequences of illegally *overstaying*. Yes, many Filipinos understand that the accrual of *unlawful presence*, as defined by the USCIS, may carry stiff penalties.

But you would be shocked to find out how many people, Filipino and non-Filipino, walk into my law office without knowing the specific penalties. Therefore, allow me to state these simple, but well-settled, USCIS regulations: (i) individuals who have been unlawfully present in the U.S. for *more than 180 days but less than one year* beginning on April 1, 1997, and who left the U.S. voluntarily, will be *inadmissible for three years from the date of their departure*; and (ii) those who are unlawfully present in the U.S. for *one year or more* from April 1, 1997 and leave the U.S. will be *inadmissible for ten years from the date of their departure*.

Like other USCIS regulations, there are some limited exceptions to these penalties. However, USCIS generally enforces these harsh penalties across the board.

What does this mean? In most cases, it means that each day an individual overstays the expiration date indicated on their I-94 document, they may be accruing *unlawful presence* and in danger of potentially receiving a multi-year ban on reentry if

they ever leave the U.S. Therefore, non-immigrant visa holders need to assess their specific situations *well before* their I-94 document expiration dates.

I am sure that you would be surprised to learn about how many different types of visa options may be available to such individuals. As I always explain to my clients, “USCIS wants you to enter the U.S. *legally* – no matter how difficult this initial entry process may be. However, once you are in the country *legally*, there are many available visa options to keep you in the country *relatively easily*, as long as you *take the initiative to pursue your options early on*. Don’t make the mistake of too many unfortunate Filipinos, *stuck and hiding* in the country they dreamed of immigrating to, unable to visit their homeland. Understand the law and let *it work for you*.”

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