




| | | | |
|---|----------|--|-----------|
| Post-September 11 issues | 3 | Lawful Permanent Residence | 8 |
| • Border security bill becomes law | 3 | • PERM rules proposed | 8 |
| • New security check on all INS applications and petitions; including full middle name will facilitate processing | 3 | • Procedural changes to consular processing of immigrant visas | 9 |
| • Limits placed on automatic revalidation of visa benefit | 3 | • INS will accept adjustment applications of certain H-1B physicians still fulfilling medical service requirements | 9 |
| • Panel to review study in sensitive subjects | 3 | • 40 quarters of SSA coverage in lieu of I-864 affidavit of support | 10 |
| SEVIS | 4 | Visas and consular affairs | 10 |
| • New batch interface document planned | 4 | • Field cables now posted on DOS Visa Services Web site | 10 |
| • INS proposes SEVIS regulations | 4 | • Form DS-157 now required for male NIV applicants between the ages of 14 to 45 | 10 |
| • SEVIS fee collection rule deferred | 4 | • DOS raises MRV fee to \$65 effective 6/1/02 | 10 |
| • DOS J regulations | 4 | Government agency administration | 10 |
| F-1 students | 5 | • Proposals to restructure INS | 10 |
| • F-1 SEVIS regulations proposed | 5 | | |
| • Study in B status before COS to F-1 | 5 | Appendices | |
| • New address for London, Kentucky processing center | 5 | 📖 Appendix 1: “NAFSA summary of HR 3525 border security bill” on page 13 | |
| • New version of Form I-538 now available on INS Web site | 5 | 📖 Appendix 2: “DOS cable on automatic revalidation changes” on page 15 | |
| • Sources say signature cards no longer necessary for EAD applications | 5 | 📖 Appendix 3: “Changes to Exchange Visitor Program office structure” on page 20 | |
| J exchange visitors | 5 | 📖 Appendix 4: “Interim rule on study in B status” on page 21 | |
| • J “intern” and other regulations | 5 | 📖 Appendix 5: “INS memo on B study rule” on page 24 | |
| • SEVIS regulations | 5 | 📖 Appendix 6: “Proposed B rule on length of B stay and change of status to F-1” on page 27 | |
| • Technical amendments | 5 | 📖 Appendix 7: “NAFSA compiled version of proposed INS SEVIS reg” on page 32 | |
| • USDA no longer an IGA waiver sponsor | 6 | 📖 Appendix 8: “Two DOS cables on Form DS-157” on page 55 | |
| • Exchange Visitor Program office structure | 6 | 📖 Appendix 9: “Title 5 of HR 3525 border security bill” on page 58 | |
| • Form DS-2019 to replace Form IAP-66 | 6 | 📖 Appendix 10: “Corrections to exchange visitor regulations” on page 62 | |
| • Waiver application form on DOS Web site | 6 | | |
| Visitors (B-1, B-2, WB, WT) | 6 | | |
| • New restriction on studying while in B status | 6 | | |
| • Proposed restriction on change of status from B to F or M | 7 | | |
| • Proposed limit on amount of time B visitor admitted to U.S. | 7 | | |
| • Proposed restrictions on extending length of B-1 or B-2 stay | 7 | | |
| • Argentina removed from Visa Waiver Program | 7 | | |
| • DOS issues regulation to defer to INS list of VWP countries | 8 | | |
| H-1B specialty workers | 8 | | |
| • DOL implements new Web-based LCA processing system | 8 | | |
| • H-1B prevailing wage rules affected by provisions in proposed PERM rule | 8 | | |



Key to icons used in the *Quarterly*

-  The information after this icon is the official citation of the primary source of authority being discussed in the article.
-  This icon indicates that information is available on the web, and provides the web address of the information being discussed
-  This icon indicates that the article cross-references to another article, or references a document reprinted in the appendices of *The Immigration Adviser Quarterly*

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The *Immigration Adviser Quarterly* is part of the yearly subscription service that supports the *NAFSA Adviser's Manual of federal regulations affecting students and scholars*. The annual service includes four consecutive issues of the *Quarterly* as well as one annual set of update pages to replace any content of your *NAFSA Adviser's Manual* that may have changed over the course of a year. The *Manual* update pages are sent out once per subscription year, usually in late Summer. We are also developing an *Adviser's Manual Companion Web site*, the first phase of which is scheduled to go live in July 2002. Phase one of the Web site will include news and updates with downloadable source documents, useful links, and other resources. As soon as the Web site is up, all current subscribers will be sent a Web access certificate, which will allow them to log on to the Web site for the duration of their current subscription.

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Post-September 11 issues


Legislative action

- **Border security bill**

On May 14, 2002 President Bush signed into law the Enhanced Border Security and Visa Entry Reform Act (H.R.3525). The interim student monitoring measures in Title 5 of the law are to be implemented within 120 days of the date the bill was signed into law.

 Pub.L. 107-173 (H.R. 3525), Enhanced Border Security and Visa Entry Reform Act of 2002

 See Appendix 1: “NAFSA summary of HR 3525 border security bill” on page 13

 See Appendix 9: “Title 5 of HR 3525 border security bill” on page 58 for the text of the bill’s student monitoring provisions

Agency security clearances and other security measures

- **New security check on all INS applications and petitions; including full middle name will facilitate processing**

In April 2002, INS announced that all pending and future petitions and applications, except N-400 naturalization applications, are being subjected to a new security check. INS is not yet able to say how this process might impact adjudication processing times. It has stated that “premium processing” will not be delayed by the new security checks unless there is a security “hit.”


We also have heard reports that since this security check utilizes the full middle name of an individual, the full middle name, not just the middle initial, of all individuals listed on INS forms, applications and petitions should be provided, to facilitate processing of the application or petition.


- **Limits placed on automatic revalidation of visa benefit**


On March 7, 2002, the State Department issued a rule amending 22 C.F.R. § 112(d), the “automatic revalidation of visa” benefit that allows certain nonimmigrants to reenter the United States after a 30-day or less visit to “contiguous territory.” There

are 2 changes to the benefit, both of which were effective April 1, 2002:

- First, citizens of “state sponsors of terrorism” (currently Iraq, Iran, Syria, Libya, Sudan, North Korea, and Cuba) are no longer eligible for the automatic revalidation benefit in any circumstance.
- Second, any nonimmigrant who chooses to apply for a new visa while in contiguous territory will not be eligible for the “automatic revalidation” benefit during the course of that trip, but would rather have to wait until the visa is granted in order to reenter the United States. The benefit remains unchanged for individuals who are not citizens of a state sponsor of terrorism and who do not apply for a visa while in contiguous territory.

 67 Fed.Reg. 10322 (March 7, 2002)

 See Appendix 2: “DOS cable on automatic revalidation changes” on page 15 for DOS cable State 50158 (March 14, 2002) on this topic. The cable is also on the DOS Web site at: <http://travel.state.gov/state50158.html>

 Consult NAFSA Practice Advisory 2002-B on the NAFSA Web site at www.nafsa.org/amq for additional discussion of this topic

- **Panel to review study in sensitive subjects**

On May 7, 2002 the Bush administration announced plans to create a federal panel to scrutinize applicants for student or exchange visitor visas who want to study or conduct research in certain sensitive science and technology fields that are “uniquely available” in the United States. The new panel, to be called the Interagency Panel for Science and Security, or IPASS, would consider various factors when reviewing a visa application, including the applicant’s previous education and training, country of origin, the specific area of study the person intends to pursue, and the nature of the research and work being conducted in that field at the institution where the person plans to study. Although a clearance procedure already exists for fields on the State Department’s Technology Alert List, the new panel would expand and standardize the scope of the inquiry. The panel will be jointly led by the Departments of Justice and State, and include representatives from the Office of Homeland Security, the Office of Science and Technology Policy, the NIH, the NSF, the

NSC, the OMB, intelligence and law enforcement agencies, and the Departments of Education Department, Agriculture, Defense, and Energy.

- ✦ For a NAFSA summary of this initiative, go to the NAFSA Web site at: www.nafsa.org/content/publicpolicy/NAFSAontheissues/OSTP_briefing.htm

SEVIS

SEVIS implementation

- **New batch interface document planned**

INS and EDS will soon release an updated SEVIS "batch interface document," (last updated November 2001) to allow software vendors and institutional technical experts to continue preparing their systems for eventual SEVIS reporting and forms generation. EDS is planning to hold a technical conference for vendors and technical personnel in mid-June (the INS Web site says June 13), in the Washington, DC area. The latest batch interface document will be used as the basis for that conference.

- **EDS information seminars and regional coordinators now listed on INS Web site**

EDS, INS's technical contractor developing the SEVIS system, has posted its schedule of SEVIS Implementation Seminars on INS's SEVIS Web pages. Also posted there is the list of EDS regional coordinators whose mission is to facilitate SEVIS implementation.

- ✦ <http://www.insj.gov/graphics/services/temp-benefits/sevistrain.htm> for the EDS seminar schedule
- ✦ <http://www.ins.gov/graphics/services/temp-benefits/seviscoord.htm> for the EDS coordinator contact list

INS SEVIS regulations

- **INS F and M regulations**

On May 16, INS published its long-anticipated proposed SEVIS regulations. As anticipated, INS proposes a SEVIS "mandatory compliance" date of January 30, 2003 for F and M nonimmigrants. The proposed rule states that Department of State regulations (not yet published) will set a SEVIS

mandatory compliance date for J exchange visitors. Members should be aware that what has been published in the Federal Register is a proposed rule, and so it is not yet law. INS is encouraging comments from the public during the 30-day public comment period, which ends June 17, 2002.

- 📖 See Appendix 7: "NAFSA compiled version of proposed INS SEVIS reg" on page 32

- ✦ The text of the entire proposed rule is posted on the NAFSA SEVP information pages on its Web site (www.nafsa.org/sevp)

- **SEVIS fee collection rule deferred**

The INS Web site reports the following:

The USA PATRIOT Act, Public Law 107-56, enacted October 26, 2001, specifically addressed the Student & Exchange Visitor Information System (SEVIS). The most significant impact is that it accelerates the program, requiring SEVIS to be fully implemented prior to January 1, 2003. The act also authorized funding to accommodate the fast track implementation. The Administration supports the statutory provision that SEVIS is to be funded by a user fee. This commitment has not changed, but the deployment date for fee collection has been deferred considering the authorization of appropriated funding.

- **DOS J SEVIS regulations**

At the time this update was prepared, the Department of State had not issued proposed regulations to implement SEVIS for J exchange visitors. DOS has indicated that its regulations are at an advanced stage of readiness, and that their SEVIS J regulations should be published around the same time as INS's F and M SEVIS regulations.

- ✦ NAFSA will post the proposed J rule on the SEVP information pages on its Web site (www.nafsa.org/sevp) as soon it is published




NAFSA's SEVIS Practice Support Group

In June 2002, NAFSA President June Noronha appointed a National Coordinator for SEVP practice support. The current coordinator is Kathy Belows (Georgetown University), who will head the practice support group until July, 1 2002. Laura Taylor (Cornell University) has been appointed as the new SEVIS Coordinator effective July 1, 2002.

John Greisberger (Ohio State University), past CIPRIS Working Group Chair, will act as Senior Advisor to Laura until January, 2003 when he begins his term as President-Elect of NAFSA. The mission of the group is to define and meet the information needs of members and identify issues and practice advocacy problems to bring to the attention of government agencies and companies involved with the implementation of SEVIS.

F-1 students

F regulations

- **F-1 SEVIS regulations**
 See • “INS F and M regulations” on page 4
- **Study in B status prior to change of status to F-1**
 See • “New restriction on studying while in B status” on page 6
 See • “Proposed restriction on change of status from B to F or M” on page 7

F-1 procedures and processes

- **New address for London, Kentucky processing center**
 Effective December 3, 2001, the address of the INS Student/School Processing center in London, Kentucky has changed. The new addresses for that center are:
 - If sending forms via U.S. mail, address to:

INS Student/School Processing
 ACS, Inc.
 PO Box 170
 London, KY 40741
 - Street address if sending forms via an overnight express carrier:

INS Student/School Processing
 ACS, Inc.
 1084 South Laurel Road
 London, KY 40744
 Ph: 606-878-7900

Some confusion was caused by the notice sent out to communicate these address changes, since the notice referred to certain forms that are not supposed to be sent to the London, KY center. INS has


confirmed that only the address has changed; all other procedures, including the types of forms to be sent to the center, remain unchanged.

F-1 forms and fees

- **New version of Form I-538 now available on INS Web site**

The 3/13/02 version of Form I-538 is now available on the INS Web site. The following prior versions of the form are also acceptable for the time being: 09/18/00 and 10/13/98.

Please note: the mailing address for the INS Student/School processing center in Kentucky on both the new I-538 Form and the INS Web site is indicated as PO Box 270. INS has confirmed that the correct PO Box is 170, as listed in “New address for London, Kentucky processing center” on page 5 of this issue of the *Quarterly*.

 Download Form I-538 from the INS Web site at: <http://www.ins.gov/graphics/formsfee/forms/i-538.htm>

- **Sources say signature cards no longer necessary for EAD applications**

Several sources have reported that INS has revised its Form I-765 procedures to no longer require signature cards. Instead, INS will produce the EAD by scanning the signature on the I-765. INS recommends that signatures be legible and in black ink.


J exchange visitors

Exchange Visitor regulations

- **J “intern” and other regulations**

DOS has prepared regulations to implement a new category of Exchange Visitor program activity for “internships.” Also being discussed are regulations that could extend the 3 year limit on program duration for professors and researchers to 5 years. Neither regulation had been published as of the date this issue of the *Quarterly* was prepared.


- **SEVIS regulations**


 See • “DOS J SEVIS regulations” on page 4 for information on the DOS J SEVIS regulations

• **Technical amendments**

On April 11, 2002 DOS published a rule making technical changes to the exchange visitor regulations, including:

1. Updating internal cross-references, by removing all old references to part 514 (pre-merger CFR home for the EVP regulations), and replacing them with references to part 62 (post-merger CFR home for the EVP regulations);
2. Updating references to specific DOS organizational units that have changed to date;
3. Striking "IAP-66" throughout part 62, and replacing it with "DS-2019," even though the DS-2019 is not yet in circulation.

 67 Fed.Reg. 17611 (April 11, 2002)

 See Appendix 10: "Corrections to exchange visitor regulations" on page 62 for the text of the rule

Two-year home residence requirement 212(e) and waivers

• **USDA no longer an IGA waiver sponsor**

At the end of February, 2002, the U.S. Department of Agriculture (USDA) announced it will no longer act as an Interested Government Agency (IGA) in support of 212(e) waivers for foreign physicians. USDA cited "heightened security concerns following Sept. 11 and lack of authority by USDA to conduct appropriate background checks on potential candidates prior to forwarding applications to the Department of State" as the principal reasons the agency withdrew from the IGA program. USDA later confirmed that it would continue to process its pending IGA sponsorship applications.

Agency liaison


• **Exchange Visitor Program office structure**

In December 2001, the Office of Exchange Coordination and Designation of the DOS Exchange Visitor Program announced the following new office structure:

- Office Director: Stanley S. Colvin
- Director of the Academic and Government Division: Margaret H. Duell

- Director of the Private Sector Division: Sally J. Lawrence

The office telephone number and office address remain the same.

 See Appendix 3: "Changes to Exchange Visitor Program office structure" on page 20 for the DOS notice on these changes

Exchange Visitor forms and fees


• **Form DS-2019 to replace Form IAP-66**

DOS has redesignated Form IAP-66 as a State Department form, with the form designation "DS-2019." The Department has ordered a supply of the new forms, which will be used by program sponsors until they fully convert to the SEVIS system. The SEVIS system will also generate a paper form (one that can be produced with a laser printer, though) also to be called "DS-2019." Once SEVIS becomes mandatory for all program sponsors, the non-SEVIS DS-2019 will be phased out.

DOS will be sending instructions to program sponsors about how to order the DS-2019, as well as what program sponsors should do with any Forms IAP-66 still in the program sponsors' possession.

• **Waiver application form on DOS Web site**

The latest version of Form DS-3035, the J-1 waiver review application, is now available on the DOS Web site.

 Go to <http://travel.state.gov/DS-3035.pdf> for the latest version of Form DS-3035, the J-1 Visa Waiver Review Application


Visitors (B-1, B-2, WB, WT)


Final or interim rules affecting B visitors


• **New restriction on studying while in B status**


An interim rule published on April 12, 2002 prohibits B nonimmigrants (both B-1 visitors for business and B-2 visitors for pleasure) from "enrolling in a course of study" unless and until the Service has approved the B nonimmigrant's change to F-1 or M-1 status. The rule applies only to B nonimmigrants who obtain B status on or after April 12, 2002. It does not apply to B nonimmigrants currently in the United States who were admitted

before that date, unless they apply to have their B status extended on or after April 12, 2002.

 67 Fed.Reg. 18061 (April 12, 2002)


 See Appendix 4: "Interim rule on study in B status" on page 21 for the text of the rule


 See Appendix 5: "INS memo on B study rule" on page 24 for INS field guidance

 For additional information, consult NAFSA Practice Advisory 2002-C, on the NAFSA Web site

Proposed rules that will affect B visitors

The following proposals are part of a proposed rule published April 12, 2002 in the Federal Register. The 30-day public comment period ended on May 13, 2002. At the time this issue of the *Quarterly* was prepared, an interim or final rule had not yet been published. The final rule may look different than the proposed rule, in response to public comment.

 The proposed B rule was published at 67 Fed.Reg. 18065 (April 12, 2002)

 See Appendix 6: "Proposed B rule on length of B stay and change of status to F-1" on page 27 for the text of the proposed rule

- **Proposed restriction on change of status from B to F or M**

A proposed rule would require persons admitted as B nonimmigrant visitors to clearly state to INS their intention to study in the United States, at the time they initially apply for entry to the United States as a visitor. The INS inspecting officer would then record the prospective student intent on the visitor's Form I-94. Visitors without such a notation on their Form I-94 would be ineligible to change their status to that of an F or M student. The rule would also prohibit an alien who has been granted an extension of B nonimmigrant status on or after the effective date of a final rule to apply for change of status to that of an F or M nonimmigrant student.

This restriction would not apply to those already in the United States in B nonimmigrant visitor status before the rule's effective date, since they may have already started a course of study in reliance upon existing rules. The rule does not bar individuals admitted under other nonimmigrant visa categories from changing status to F or M.

- **Proposed limit on amount of time B visitor admitted to U.S.**

Under current rules, B-2 visitors for pleasure are automatically admitted for a period of 6 months. Under the proposed rule, INS is given the discretion to admit the individual for "a period of time that is fair and reasonable for the completion of the purpose of the visit." If Inspectors cannot determine a fair and reasonable period of admission, INS will grant a 30-day period of admission. If an alien establishes the need for a period of stay longer than 30 days, the Inspector will grant an "appropriate and proportionate" period of admission. The rule also proposes to reduce the maximum amount of time a B-1 or B-2 visitor could be admitted for to 6 months. The current maximum is one year.

- **Proposed restrictions on extending length of B-1 or B-2 stay**

The rule also proposes to tighten the requirements for extending a B-1 or B-2 stay. First, the rule would explicitly require the applicant to prove that he or she has the adequate financial resources to continue his or her temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad. Second, extensions would be approved only for:

- Cases that have resulted from unexpected events that would prevent departure by the end of the period originally granted;
- Compelling humanitarian reasons such as for emergency or continuing medical treatment;
- B nonimmigrants listed at proposed section 214.2(b)(6), who entered for "specific, legitimate reasons that, by their very nature, can require a stay of longer than 6 months;" and
- As otherwise determined by INS policy.

Visa Waiver Program (VWP)

- **Argentina removed from Visa Waiver Program**


Effective February 21, 2002, Argentina was removed from the list of countries authorized to participate in the Visa Waiver Program (VWP). The VWP allows citizens of participating countries to enter the U.S. as WB or WT visitors for 90 days, without having to obtain a B visitor visa. INS and DOS stated that Argentina was removed "due to the current economic crisis in Argentina and the


increase in the number of Argentine nationals attempting to use the program to live and work illegally in the United States.”

 67 Fed.Reg. 7943 (February 21, 2002)

- **DOS issues regulation to defer to INS list of VWP countries**

Citing the fact that final authority for designating countries to participate in the VWP rests with the Attorney General, DOS has eliminated the list of designated countries entirely from its regulations, replacing it with a cross reference to the authoritative list contained in the INS VWP regulations at 8 CFR 217.2(a). The rule also recognizes that when INS denies admission under the VWP because of an INA 212(a) ground of inadmissibility, a visa application at a consulate abroad is the only means of challenging such a determination, and so the rule adds a new paragraph that requires consular officers to accept and adjudicate (but not necessarily approve) a properly filed visa application from a national of a program country who has been denied admission under the VWP because of INA 212(a).

 67 Fed.Reg. 30546 (May 7, 2002)

 The text of this rule can be downloaded from the NAFSA Web site at www.nafsa.org/amq

H-1B specialty workers


Labor Condition Applications (LCAs)


- **DOL implements new Web-based LCA processing system**


The Department of Labor (DOL) implemented a new Web-based electronic LCA filing system. Effective January 14, 2002, employers have the option to use the Web-based system to fill out their LCAs on a DOL Web site and submit the information electronically to the Employment and Training Administration (ETA). The information submitted is verified electronically, and an LCA form (designated ETA-9035E) bearing the appropriate DOL certifications is produced. Employers must then print out and sign the generated form, submit a copy of the completed form with their H-1B petition filed with INS, and retain the original signed document in its LCA inspection files.

The system also allows employers who frequently file LCAs to set up “secure files” containing information which is common to any LCA they file. Using that function, each time the employer files an LCA, the information common to all its LCAs is entered automatically by the system, and the employer only has to enter the data specific to the particular LCA being filed.

The current mail-in and fax-back filing options continue to be available to employers, with electronic filing via the Web as a third filing option. The December 5 rule modifies the LCA regulations to add the new electronic way of filing.

 66 Fed.Reg. 63298 (December 5, 2001) is the rule implementing the new system

 Because of its size, the LCA electronic filing rule is not reproduced in this issue of the Quarterly. The rule can be downloaded from the NAFSA Web site at www.nafsa.org/amq

 <http://workforcesecurity.doleta.gov/foreign.asp> for links to the electronic LCA

- **H-1B prevailing wage rules affected by provisions in proposed PERM rule**

The changes to prevailing wage determinations (PWDs) proposed in the proposed PERM rule (See • “PERM rules proposed” on page 8) would also apply to PWDs for H-1B purposes. The PERM rule also proposes that the area covered by a prevailing wage survey should be expanded any time it is not possible to obtain a representative sample of similarly employed workers.

Lawful Permanent Residence

PERM program

- **PERM rules proposed**

On May 6, 2002, the Department of Labor published a proposed rule that would implement the long-anticipated “PERM” program. The 60-day public comment period ends July 5, 2002. Highlights of the proposal of interest to higher education include:

- **College and university teachers.** Although the rule eliminates “special handling,” it still allows for special treatment of college and university teaching positions. The documentation require-

ments for filing applications for those positions remain much the same as under the current regulation. The proposed rule would also allow a college or university to opt for processing the application under the new standard processing rules, but still take advantage of the statutory requirement that requires showing only that the alien was found to be more qualified than any U.S. applicant.

- **Prevailing wages.** Employers would obtain a prevailing wage determination (PWD) from their State Workforce Agency (SWA) on a new standardized PWD request form (a 3-page form called ETA Form 9088), before filing a labor certification application. The current rule that allows for a 5% variance from the prevailing wage would be eliminated. If the employer provides prevailing wage survey information to the SWA, it could also use surveys that express the median rather than the mean. SWAs would have to specify the validity period of the PWD, which could be anywhere from 90 days to 1 year.
- **Recruitment process.** Employers would conduct recruitment, including filing a job order with the SWA, before filing the labor certification application with the SWA. The proposed rule specifies new standards for advertisements.
- **Filing and adjudication.** The standard labor certification process would become an attestation-based application. An employer would obtain a PWD, conduct required recruitment, and then file a 5-page form called ETA Form 9089, on which it attests that no U.S. workers with the minimum qualifications were identified in the recruitment. The ETA 9089 would be analyzed first by computer to ensure they are complete. The application would then be screened and then certified, denied, or selected for audit. All employers would be required to maintain documentation of the recruitment it undertook, including the lawful, job-related reasons for rejecting U.S. workers. In any case where the Certifying Officer determines it's appropriate, post-filing supervised recruitment may be ordered.
- **Job requirements.** The rule would provide that job requirements cannot exceed the Specific Vocational Preparation (SVP) level for the occupation, except under very limited circumstances. "Business necessity" could no longer be used to

justify job requirements that exceed those normally required for the job. The rule would also prohibit employers from including as a requirement for the job any experience the alien gained working for the employer in any capacity, including working as a contract employee. Lastly, the rule proposes eliminating the use of "alternative experience" requirements as a means of qualifying for the job.

- **Filing fee.** Employers may have to pay an application processing fee. The fee is not yet specified, since charging a fee depends on Congress passing enabling legislation.

✍ 67 Fed.Reg. 30466 (May 6, 2002) is the cite for the proposed PERM rule

📖 Because of its size, the 57-page proposed PERM rule is not reproduced in the appendices of the Quarterly. It can be downloaded from the NAFSA Web site at www.nafsa.org/amq.

Adjustment of status and immigrant visa processing

- **Procedural changes to consular processing of immigrant visas**

In December, 2001 DOS notified its consular offices that the numbered packet system that had been used for years to facilitate applications for immigrant visas (IVs) has been eliminated:

Packets 1, 2, 2a and 3a no longer exist. Standardized information sheets should be used to respond to queries as discussed below. The old Packet 3 has now been renamed the "Instruction Package for Immigrant Visa Applicants." Packet 4 is referred to as the "Appointment Package for Immigrant Visa Applicants." Packet 4a, important as the mailing that initiates the termination process, is now referred to as the "Follow-Up Instruction Package for Immigrant Visa Applicants."

📖 The December 11, 2001 DOS field cable on this issue is available on the DOS Web site at: <http://travel.state.gov/state211789.html>

📖 The Foreign Affairs Manual (FAM) treatment of the procedures that replace the "packet system" are available on the Web at: <http://foia.state.gov/masterdocs/09fam/0942063PN.pdf>

- **INS will accept adjustment applications of certain H-1B physicians still fulfilling medical service requirements**

INS decided it would accept an adjustment of status application from an alien physician who is the beneficiary of an approved Form I-140 with an approved National Interest Waiver request based on service in a medically underserved area, who is still fulfilling his or her three-year medical service requirement in H-1B status pursuant to an INA § 214(l) waiver of the 212(e) home residence requirement. The adjustment application will not be approved, however, until the service required by both waivers is completed.

✪ Go to <http://www.ins.usdoj.gov/graphics/lawsregs/handbook/polgui214.pdf> for the INS memo communicating this policy

- **40 quarters of SSA coverage in lieu of I-864 affidavit of support**

INS stated that the I-864 affidavit of support requirement may be waived if the alien can demonstrate 40 quarters of work under the Social Security Act (SSA).

✪ Go to <http://www.ins.usdoj.gov/graphics/lawsregs/handbook/AFDSUPTCCA.PDF> for an INS field memo on this topic

✪ Go to <http://travel.state.gov/state034687.html> for the DOS field cable on this topic

Visas and consular affairs

Visa policy guidance

- **Field cables now posted on DOS Visa Services Web site**

In March, 2002 the Department of State began posting recent field cables that are of interest to the public on the Visa Services Web site.

✪ Recent DOS field cables can now be viewed on the Web at http://travel.state.gov/visa_telegrams.html

Consular forms and fees

- **Form DS-157 now required for male nonimmigrant visa applicants between the ages of 14 to 45**

Form DS-157 a new supplement to the standard nonimmigrant visa application (Form DS-156) must now be completed and included with Form DS-156 (including stateside revalidation of H, L, O, P, E, or I visas) by all male nonimmigrant visa applicants between the ages of 16 and 45. Consular officers have also been given the discretion to require the form to be completed by applicants outside this group, on a case-by-case basis. Exception: All A, G, and NATO applicants, except for A-3, G-5 and NATO-7 applicants, are exempt from the DS-157 requirement.

✪ Go to <http://travel.state.gov/DS-0157.pdf> to download Form DS-157

✪ Go to <http://travel.state.gov/state006020.html> and <http://travel.state.gov/state007129.html> for two DOS field cables on the DS-157 requirement

- **DOS raises MRV fee to \$65**

On May 16, 2002, DOS issued a final rule that will raise the “machine readable visa” (MRV) fee from \$45 to \$65. The fee hike is effective June 1, 2002. The MRV fee is a processing fee paid by all non-immigrant visa applicants, and is distinct from “reciprocity” fees, which are determined with reference to what a foreign country charges U.S. citizens for similar visas.

✍ 67 Fed.Reg. 34831 (May 16, 2002)

Government agency administration

Immigration and Naturalization Service

- **Proposals to restructure INS**

- **Senate bill S. 2444**, introduced on May 2, 2002, by Sen. Edward Kennedy (D-Mass.), would eliminate the Immigration and Naturalization Service (INS) and create a new Immigration Affairs Agency headed by a Director of Immigration Affairs that is appointed by the President with the advice and consent of the Senate. The new agency would have two Bureaus, one for Immigration Services & Adjudications and one

for Enforcement and Border Affairs, each headed by a Deputy Director appointed by the Attorney General with mechanisms to coordinate on policy matters between those two branches.

- **House bill HR 3231** would replace INS with a new Office of the Associate Attorney General for Immigration Affairs (whose head would be appointed by the President, by and with the consent of the Senate), under which would be a Bureau of Citizenship and Immigration Services, and a Bureau of Immigration Enforcement. This bill would require the Director of the Bureau of Citizenship and Immigration Services to designate “an official to be responsible for administering student visa programs and the Student and Exchange Visitor Information System established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” until Sept. 30, 2004.
 - **INS’s own proposal** can be downloaded from the INS Web site at: <http://www.ins.usdoj.gov/graphics/aboutins/restruct/proposal.pdf>
-

Appendices begin on the next page

- 📖 Appendix 1: “NAFSA summary of HR 3525 border security bill” on page 13
- 📖 Appendix 2: “DOS cable on automatic revalidation changes” on page 15
- 📖 Appendix 3: “Changes to Exchange Visitor Program office structure” on page 20
- 📖 Appendix 4: “Interim rule on study in B status” on page 21
- 📖 Appendix 5: “INS memo on B study rule” on page 24
- 📖 Appendix 6: “Proposed B rule on length of B stay and change of status to F-1” on page 27
- 📖 Appendix 7: “NAFSA compiled version of proposed INS SEVIS reg” on page 32
- 📖 Appendix 8: “Two DOS cables on Form DS-157” on page 55
- 📖 Appendix 9: “Title 5 of HR 3525 border security bill” on page 58
- 📖 Appendix 10: “Corrections to exchange visitor regulations” on page 62

Appendix 1: NAFSA summary of HR 3525 border security bill**• Provisions amending IIRAIRA § 641:**

1. Requires the establishment of electronic means to monitor and verify:
 - issuance of documentation of acceptance of a foreign student or exchange visitor by an institution;
 - transmittal of such documentation to the State Department;
 - issuance of an F, M, or J visa;
 - admission of holders of such visas into the United States;
 - notification to institutions of a student or exchange visitor's admission to the United States;
 - registration and enrollment of the student or exchange visitor in his or her program; and
 - other relevant acts, including transfers and termination of studies.
2. Within 30 days after the end of its enrollment period, schools must report the failure of a person, whose arrival is expected, to enroll. A similar provision applies to exchange visitor programs.
3. Schools and exchange visitor programs will be required to report the following additional information under section 641 of IIRAIRA:
 - date and port of entry;
 - date of enrollment;
 - degree program, if applicable, and field of study; and
 - date of and reason for termination of enrollment.
4. Requires the Attorney General to prescribe by regulation reporting requirements under section 641 of IIRAIRA, "taking into account the curriculum calendar" of the school or exchange visitor program.

• Interim requirements until SEVIS is fully implemented:

5. F or M visas and J visas for students at institutions of higher education may not be issued unless the school has provided to the State Department "electronic evidence of documentation of the alien's acceptance" and the consular officer has reviewed the applicant's visa record.
6. The State Department must notify the INS of the issuance of F and M visas.
7. The INS must notify the school that an alien accepted by that school has been admitted to the United States (applies to F and M students; not clear whether this also applies to J students).
8. Not later than 30 days after the end of the enrollment period, the school must inform INS, "through data-sharing arrangements," of the failure to enroll of any person with respect to whom it has been notified about entry to the U.S. (applies to F and M students; not clear whether this also applies to J students).

• Other requirements:

9. Bars any nonimmigrant visa for any alien from a country that is a state sponsor of international terrorism (currently Iraq, Iran, North Korea, Syria, Libya, Sudan, and Cuba) unless it has been determined that the alien does not pose a threat to the safety or national security of the United States.

10. Requires F, M, and J student (higher ed) visa applicants to provide the following additional information on the visa application:
 - address in country of origin;
 - names and addresses of spouse, children, parents, and siblings;
 - names of references who can verify this information; and
 - employment history.
11. Within 30 days of enactment, the Attorney General must provide to the State Department a list of all educational institutions that are authorized to receive F and M nonimmigrants.
12. INS and DOS would be required to conduct reviews every two years to determine that institutions and exchange visitor programs are in compliance with their record keeping and reporting requirements under the INA and IIRAIRA. If INS or DOS finds a material failure to comply with such requirements, the school or program sponsor would be subject to at least a one-year suspension or (at the election of INS or DOS) termination of the institution's or exchange program's approval or designation to receive foreign students or exchange visitors.

Appendix 2: DOS cable on automatic revalidation changes

UNCLASSIFIED TELEGRAM

March 14, 2002

To: ALL DIPLOMATIC AND CONSULAR POSTS

SPECIAL EMBASSY PROGRAM

AMEMBASSY BELGRADE

AMEMBASSY DUSHANBE

AMEMBASSY KABUL

INFO HQS USINS WASHDC

From: SECSTATE WASHDC (STATE 50158 - ROUTINE)

TAGS: CVIS

Subject: Revised Regulation on Automatic Revalidations

Ref: None

1. SUMMARY. This cable announces important changes in the handling of visa applications of aliens previously entitled to re-enter the US from contiguous territory or adjacent islands based upon automatic revalidation of their expired nonimmigrant visa. As currently implemented, Section 41.112(d) of 22 CFR permits aliens who are traveling in territories contiguous to the mainland U.S. or, in some cases, in adjacent islands and whose visas have expired to re-enter the United States without obtaining a new visa. The alien may do so provided that s/he has been outside the U.S. for not more than thirty (30) days and the alien's I-94 remains valid. As currently implemented, neither the alien's country of citizenship nor the question of whether s/he had applied for a new visa while outside the U.S. affects the ability of the alien to re-enter the United States. The amended regulation, which was published in the Federal Register on March 7, 2002 and will be effective as of April 1, will prohibit the re-entry using an automatically revalidated visa of any alien who has applied for a new visa while outside the United States. This change reflects the desire to prevent aliens subject to enhanced security procedures from re-entering the US via automatic revalidation prior to security checks having been completed, but will apply to all aliens otherwise eligible for re-entry via automatic revalidation. Technically, the waiting period for security checks constitutes a 221(g) refusal. Thus the cable emphasizes the importance of strict adherence to proper refusal procedures in these cases. Additionally, it excludes all aliens who are nationals of designated state sponsors of terrorism from being able to re-enter using an automatically revalidated visa. The

<http://travel.state.gov/state50158.html> (1 of 6) [5/13/2002 3:54:19 PM]

Revised Regulation on Automatic Revalidations

Department is consulting with the embassies of the countries affected by this change. END SUMMARY.

2. 41.112 Validity of visa. (d). Automatic extension of validity at ports of entry.

(1) Provided that the requirements set out in paragraph (d)(2) of this section are fully met, the following provisions apply to nonimmigrant aliens seeking readmission at ports of entry:

(i) The validity of an expired nonimmigrant visa issued under INA 101(a)(15) may be considered to be automatically extended to the date of application for readmission, and

(ii) In cases where the original nonimmigrant classification of an alien has been changed by INS to another nonimmigrant classification, the validity of an expired or unexpired nonimmigrant visa may be considered to be automatically extended to the date of application for readmission, and the visa may be converted as necessary to that changed classification.

(2) The provisions in paragraph (d)(1) of this section are applicable only in the case of a nonimmigrant alien who:

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by INS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, issued by the school the student has been authorized to attend by INS, or by the sponsor of the exchange program in which the alien has been authorized to participate by INS, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay

authorized by INS;

(ii) Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child meeting the stipulations of paragraph (d)(2)(i) of this section, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;

(iii) Has maintained and intends to resume nonimmigrant status;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport;

Revised Regulation on Automatic Revalidations

for an advisory opinion or any other reason [see 41.121 PN3]. The stamp is often the only way an Immigration Inspector at the port of entry will know that an alien has applied for a visa and is thus ineligible for the benefits of 22 CFR 41.112(d).

5. The revised and renumbered Procedural Notes read as follows:

PN1.2-13 Indicate Refusal in Passport

a. Posts must place a stamp in the applicant's passport to indicate when a visa application is received and refused. The stamp is for record keeping purposes, i.e., it will assist the post in locating chronologically filed applications if the applicant reapplies for a visa. If the applicant applies at a different post, it will immediately alert the officer that the applicant has made a previous application for a visa.

b. The stamp must contain the following text:

U.S. (Embassy/Consulate General/Consulate) (Name of Post)

Application Received on _____ (Date of Application).

c. A passport bearing the above stamp and a subsequently issued visa indicates that the refusal was overcome or a waiver of the ineligibility was granted. Details of a waiver of ineligibility must be annotated on the visa in accordance with 41.113 PN10.

PN1.2-14 Procedures for Placing Refusal Stamp in Passport

The following procedure must be used when stamping the passport to reflect that the applicant has been refused a visa:

(1) The stamp must be placed on the back page of the passport (the page furthest from the front containing the applicant's biographic data and/or photograph).

(2) The date must be entered with indelible ink by hand or with a date stamp.

(3) If an applicant returns frequently for a new interview with the same passport but is still considered ineligible, the passport need not be stamped each time, though the date of the refusal must be entered each time. The passport must be stamped with a new Application Received stamp after a three-month interval.

6. In connection with 4.112(d), consular officers are to deem an application to have been refused if a visa is not immediately issued.

Revised Regulation on Automatic Revalidations

7. The exclusion from automatic revalidation will apply to aliens who attempt to re-enter the United States on or after April 1, regardless of whether their application for a visa was filed prior to that date.

8. The Department is discussing with INS whether additional procedures ought to be utilized to insure that INS inspectors at the border may easily determine when an alien is not eligible for automatic visa revalidation. These might include physical cancellation of the existing visa, stamping the alien's I-94 or even passing relevant lookouts to INS electronically. Additional instructions will follow if any of these procedures are adopted for use.

9. CA has prepared the following brief Q&A for use in response to press and public inquiries that might arise following the publication of the Federal Register amendment and the implementation of the new policy:

Q1. What does this revised regulation change?

A1. The revised regulation prohibits aliens who have applied for and been refused visa issuance while outside the U.S. from returning to the United States, even if they are in possession of a valid I-94 form. It also prohibits aliens who are citizens of countries on the State Departments list of State Sponsors of Terrorism from re-entering the U.S. using solely an I-94 form if their visa has expired.

Q2. Why is this change being implemented?

A2. The U.S. Government has undertaken a variety of efforts since September 11 to enhance border security and ensure that only individuals eligible to enter the United States are allowed entry. This is the latest of these efforts.

Q3. How, specifically, do you think that this change will enhance border security?

A3. The previous regulation allowed individuals whose visas had expired but whose I-94 forms remained valid to re-enter the U.S. without obtaining a new visa. The previous regulation made limited distinctions among citizens of various nationalities, and aliens who applied for and were denied a new visa were nonetheless permitted to re-enter the United States.

The changes we are now implementing enhance border security by (a) requiring that aliens from state sponsors of terrorism obtain a new visa (and thus go through a new set of interviews, computer checks, etc.) before re-entering the United States, and (b) ensuring that people who were found by one of our overseas embassies or consulates to be ineligible for a visa cannot get around such a finding by re-entering the U.S. using solely their I-94 form.

10. Minimize considered.

Revised Regulation on Automatic Revalidations

(vi) Does not require authorization for admission under INA 212(d)(3); and

(vii) Has not applied for a new visa while abroad.

(3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply to the nationals of countries identified as supporting terrorism in the Department's annual report to Congress entitled Patterns of Global Terrorism.

3. Posts must note particularly 2(vii) above relating to an alien not having applied for a visa, and review carefully the procedures for cases of aliens who do apply for a visa mentioned below. The Department determined (as the revised regulation states) that, due to post-9/11 concerns, aliens otherwise eligible for revalidation of their visa and re-entry into the United States on that basis will no longer be able to take advantage of the automatic revalidation procedure if while in contiguous territory or on an adjacent island they apply for a new visa. In order that INS inspectors be able to identify such visa applicants for the purpose of refusing their admission, consular officers must closely follow the requirements in 9 FAM 41.121 procedural notes requiring that passports be stamped "application received" when a visa is applied for but not immediately issued for any reason, including any applicable mandatory waiting period for security or other clearances.

4. As clarification of this requirement, Note 4 to 41.112(d) has been revised to read as follows:

N4 Automatic Revalidation of A Nonimmigrant Visa

N4.1 Definition of "Expired Nonimmigrant Visa" With regard to the automatic extension of validity of expired nonimmigrant visas at ports of entry pursuant to 22 CFR 41.112(d), an "expired nonimmigrant visa" means a visa which is no longer valid due to the passage of time or because the maximum number of entries for which the visa is valid has been reached.

N4.2 Certain Aliens Excluded from Use of Automatic Revalidation.

The Department has excluded aliens who apply for new visas during short visits to contiguous territory or adjacent islands and aliens who are nationals of countries identified as state sponsors of terrorism from the benefits of automatic revalidation of an expired nonimmigrant visa.

N4.3 Use of "Application Received" Stamp in Passports of Aliens Excluded from Automatic Revalidation Benefit. Because of the exclusion of aliens who apply for new visas from revalidation benefits, it is especially important that consular officers scrupulously follow the procedures concerning the use of the application received stamp [see 41.121 PN1.2-13 and PN1.2-14], including in cases deferred

<http://travel.state.gov/state50158.html> (3 of 6) [5/13/2002 3:54:19 PM]

Appendix 3: Changes to Exchange Visitor Program office structure



United States Department of State

*Bureau of Educational and Cultural Affairs
Washington, D.C. 20547*

www.state.gov

NEW CHANGES TO THE EXCHANGE VISITOR PROGRAM

Office Director:

Stanley S. Colvin
Director
Office of Exchange Coordination and Designation
Bureau of Educational and Cultural Affairs

Academic and Government Division:

Margaret H. Duell
Director
Academic and Government Division
Office of Exchange Coordination and Designation
Bureau of Educational and Cultural Affairs

Private Sector Division:

Sally J. Lawrence
Director
Private Sector Division
Office of Exchange Coordination and Designation
Bureau of Educational and Cultural Affairs

Address:

Office of Exchange Coordination and Designation
Bureau of Educational and Cultural Affairs
United States Department of State
301 4th Street, S.W., Room 734 (SA-44)
Washington, D.C. 20547

Telephone and Fax:

Telephone: 202/401-9810
Fax: 202/401-9809 (available 24/7)

(December 14, 2001)

Appendix 4: Interim rule on study in B status

18062

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Rules and Regulations

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Parts 214 and 248**

[INS No. 2195-02]

RIN 1115-AG60

Requiring Change of Status From B to F-1 or M-1 Nonimmigrant Prior to Pursuing a Course of Study**AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by eliminating the current provision allowing a B-1 or B-2 nonimmigrant visitor for business or pleasure to begin attending school without first obtaining approval of a change of nonimmigrant status request from the Service. This change will enhance the Service's ability to support the national security needs of the United States and is within the Service's authority under section 248 of the Immigration and Nationality Act (Act). The amendment will ensure that no B nonimmigrant is allowed to enroll in school until the alien has applied for, and the Service has approved, a change of nonimmigrant status to that of F-1 or M-1 nonimmigrant student.

DATES: Effective date: This interim rule is effective April 12, 2002.

Comment date: Written comments must be submitted on or before June 11, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference the INS No. 2195-02 on your correspondence. Comments may also be submitted electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2195-02 in the subject heading. Comments are available for public inspection at this location by change (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION:**Background***What Is a B Nonimmigrant Alien?*

A B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B-1) or a temporary visit for pleasure (B-2). Section 101(a)(15)(B) of the Act, 8 U.S.C. 1101(a)(15)(B), defines the visitor classification as:

An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

Based on the statutory language, the Service has long held a B-1 nonimmigrant to be one seeking admission for legitimate activities of a commercial or professional nature such as meetings, conferences, or consultations in the United States in connection with the conduct of international business and commerce. A B-2 nonimmigrant is one seeking admission for activities relating to pleasure such as touring, family visits, or for purposes of receiving medical treatment.

What Is the Service Changing in This Interim Rule?

The Service is eliminating the ability of an alien admitted to the United States as a B-1 or B-2 nonimmigrant to begin attending classes without first applying to the Service, and obtaining the Service's prior approval, for a change of nonimmigrant status to that of an F or M nonimmigrant student. This rule expressly prohibits a B nonimmigrant from enrolling in a course of study or taking other actions inconsistent with B nonimmigrant status unless and until the Service has approved the B nonimmigrant's change to an appropriate student nonimmigrant status.

Why Is the Service Instituting This Change?

The terrorist attacks of September 11, 2001, highlight the need of the Service to maintain greater control over the ability of an alien to change nonimmigrant status once the alien has been admitted to the United States. This interim rule will allow the Service to fully review any request from a B nonimmigrant to change nonimmigrant status to that of full-time student before allowing the alien to enroll in a Service-approved school. The elimination of the ability of a B nonimmigrant to begin classes before receiving the Service's

approval of the change of nonimmigrant status is also consistent with the Act's requirement in section 101(a)(15)(B) that a B nonimmigrant not be a person coming to the United States for the purpose of study.

Why Is This Change Limited to B Nonimmigrants?

In the process of drafting this rule, the Service considered making its requirements (*i.e.*, that nonimmigrants obtain a student visa before being able to take courses) apply to anyone in the United States not currently in student status. Such a requirement would be broader than the rule as presently drafted, which applies just to nonimmigrants in B-1 or B-2 visitor status.

B nonimmigrants generally enter the United States for purposes of tourism or for a business trip. Pursuing a course of study is inconsistent with these purposes, and thus inconsistent with B status. However, pursuit of studies generally is consistent with most other nonimmigrant statuses, and thus such a broader rule could have unintended and overly burdensome consequences for such nonimmigrants. For some, such a J-1 au pair or an H-3 trainee, the courses might be an integral part of the program for which they obtained their status. For many dependent spouses, such as H-4s, derivatives of A or G diplomats, or NAFTA TN-2s, studies may be their only permissible pursuit while accompanying their spouse who is working in the United States. Dependent children are, in fact, expected to attend school. Even some principals in nonimmigrant status (*e.g.*, H-1Bs, L-1s) may take courses incident to status to enhance their professional development. Requiring that these individuals change to F-1 or M-1 status in order to pursue studies would eliminate their ability to attend part-time, since by statute F-1s and M-1s must be pursuing a full course of study and since a nonimmigrant is prohibited from holding more than one nonimmigrant status while in the United States.

How Does This Interim Rule Affect B-1 or B-2 Nonimmigrants Previously Admitted to the United States?

This interim rule will accommodate B-1 or B-2 nonimmigrants who have already been admitted to the United States prior to April 12, 2002. In view of the Service's prior policy, this interim rule does not prevent such aliens from starting a course of study after filing an application for change of status, or require those aliens to stop taking

classes while the Service processes the change of nonimmigrant status request.

However, this interim rule applies to all aliens who are admitted as, or change their status to, a B-1 or B-2 nonimmigrant, on or after April 12, 2002. This interim rule also applies to all current B visitors who apply for an extension of their B nonimmigrant status on or after April 12, 2002.

Request for Comments

The Service is seeking public comments regarding this interim rule. The Service requests that parties interested in commenting on the provisions contained within this rule do so on or before June 11, 2002, as the Service will not extend the comment period.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows: The rule is necessary to ensure the national security of the United States by eliminating the ability of a B nonimmigrant to enroll in school until the Service has approved a change of nonimmigrant status application filed by the prospective alien student. The previous rule allowing such enrollment prior to adjudication of the application was used by some of the September 11th terrorists to obtain flight training in the United States. Closing this loophole is essential to efforts to prevent this abuse from recurring.

There is also reasonable concern that publication of this regulation as a proposed rule, one that would not take effect until after a final rule was promulgated, could lead to the counterproductive result of a surge of entries by individuals who have no intention of going through the consular screening process overseas and who would seek admission as a B nonimmigrant while having the intent of becoming an F or M nonimmigrant student after admission to the United States.

However, this interim rule takes account of the interests of those aliens currently admitted to the United States in B nonimmigrant status. Such aliens will continue to be governed by the Service's prior policy regarding change to F or M nonimmigrant status, for the remainder of their currently-authorized B nonimmigrant admission.

Accordingly, the Service believes that advance public notice and comment on this regulation would be impracticable

and contrary to the public interest. Therefore, there is good cause under 5 U.S.C. 553(b) and (d) for dispensing with the requirements of prior notice and to make this rule effective upon the date of publication in the **Federal Register**.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to B nonimmigrants applying to change to either F or M nonimmigrant status. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by adding and reserving paragraph (b)(6) and by adding new paragraph (b)(7) to read as follows:

§ 214.2 Special requirements for admission, extension and maintenance of status.

* * * * *

(b) * * *

(6) [Reserved]

(7) *Enrollment in a course of study prohibited.* An alien who is admitted as, or changes status to, a B-1 or B-2

18064

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Rules and Regulations

nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study. Such an alien who desires to enroll in a course of study must either obtain an F-1 or M-1 nonimmigrant visa from a consular officer abroad and seek readmission to the United States, or apply for and obtain a change of status under section 248 of the Act and 8 CFR part 248. The alien may not enroll in the course of study until the Service has admitted the alien as an F-1 or M-1 nonimmigrant or has approved the alien's application under part 248 of this chapter and changed the alien's status to that of an F-1 or M-1 nonimmigrant.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

3. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184; 1258; 8 CFR part 2.

4. Section 248.1 is amended by revising paragraph (c) to read as follows:

§ 248.1 Eligibility.

* * * * *

(c) *Change of nonimmigrant classification to that of a nonimmigrant student.*

(1) Except as provided in paragraph (c)(3) of this section, a nonimmigrant applying for a change of classification as an F-1 or M-1 student is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. The district director or service center director shall deny an application for a change to classification as an M-1 student if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from

classification as an M-1 student to that of an F-1 student.

(2) [Reserved]

(3) A nonimmigrant who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay as a B-1 or B-2 nonimmigrant on or after such date, may not pursue a course of study at an approved school unless the Service has approved his or her application for change of status to a classification as an F-1 or M-1 student. The district director or service center director will deny the change of status if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the application for change of status or while the application is pending before the Service.

* * * * *

Dated: April 9, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-8926 Filed 4-9-02; 1:54 pm]

BILLING CODE 4410-10-P

Appendix 5: INS memo on B study rule

U.S. Department of Justice
Immigration and Naturalization Service

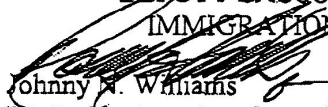
HQISD 70/6.2.2-P

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

APR 12 2002

MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES

FROM: 
Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Requiring Change of Status from B to F-1 or M-1 Nonimmigrant Prior to Pursuing a Course of Study.

On April 12, 2002, an interim rule was published in the Federal Register (copy attached) that eliminates the ability of a B nonimmigrant (both B-1 visitors for business and B-2 visitors for pleasure) to begin a course of study at a United States school without first obtaining approval from the Immigration and Naturalization Service (Service) to change nonimmigrant status to that of either F-1 or M-1 student. The interim rule was effective upon publication.

Background and Digest of Regulatory Changes

For many years, Service regulations at 8 CFR 248.1(c) provided an accommodation for nonimmigrants who enrolled in a course of study prior to filing a change of nonimmigrant status application (Service Form I-539). The accommodation stipulated that a nonimmigrant was not ineligible to change nonimmigrant status to that of student solely because the nonimmigrant had already enrolled in a course of study.

While the above noted accommodation has been beneficial to many aliens, the terrorist attacks of last year highlighted the need to gain greater control over an alien's ability to change nonimmigrant status to that of full-time student. The interim rule, by eliminating the ability of a B-1 or B-2 nonimmigrant to enroll in a course of study prior to changing nonimmigrant status to that of F or M student, will allow the Service to fully review such requests. As noted in the supplementary information section of the interim rule, this change is consistent with the statutory language of the Immigration and Nationality Act at section 101(a)(15)(B) which specifically states that a B nonimmigrant is not a person coming to the United States for the purpose of study.

Memorandum for Regional Directors, et al.

Page 2

Subject: Prohibition of B-1 or B-2 Nonimmigrants Enrolling in a Course of Study Prior to a Change of Nonimmigrant Status.

Supplemental Guidance

All Adjudications Officers must be aware of the above noted regulatory changes to parts 214.2(b) and 248.1(c) of 8 CFR. In particular, the new regulations stipulate that:

- The prohibition against beginning a course of study prior to obtaining Service approval of a change of nonimmigrant status request is limited to B-1 or B-2 nonimmigrants. The term "course of study" implies a focused program of classes, such as a full-time course load leading to a degree or, in the case of a vocational student, some type of certification. Casual, short-term classes that are not the primary purpose of the alien's presence in the United States, such as a single English language or crafts class, would not constitute a "course of study." Courses with more substance or that teach a potential vocation, such as flight training, would be considered part of a "course of study" and thus would require approval of a student status;
- An alien will be considered to be in violation of his or her B-1 or B-2 nonimmigrant status should the alien begin a course of study prior to changing status to that of F-1 or M-1 student pursuant to 8 CFR 248.1 [e new 8 CFR 214.2(b)(7)] and,
- An alien who files a change of status application on or after April 12, 2002, may not pursue a course of study unless the Service has approved the I-539 application for change to F-1 or M-1 student, and the district or service center director will deny the change of nonimmigrant status request filed on or after April 12, 2002, if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the I-539 [see new 8 CFR 248.1(c)(3)]

When adjudicating an I-539 where the alien indicates a B-1 or B-2 admission and is requesting a change of nonimmigrant status to either F-1 or M-1 student, officers must ensure that the evidence submitted in support of the I-539 confirms that the alien has not begun a course of study. Evidence that supports the alien's claim may include, but is not limited to:

- A copy of the alien's Form I-20 that indicates the date the alien's course of study will begin.
- A letter or other documentation from the school, confirming the alien's acceptance into a course of study, and confirming that the alien has not begun the course of study.

Memorandum for Regional Directors, et al.

Page 3

Subject: Prohibition of B-1 or B-2 Nonimmigrants Enrolling in a Course of Study Prior to a Change of Nonimmigrant Status.

Should the officer have any doubt as to the veracity of the alien's statements or documentation, a Request for Evidence may be issued that precisely outlines the deficiencies found in the submitted documentation. Offices may also contact the school's registrar office or the designated school official in order to determine whether the alien has or has not begun a course of study.

All Service Center Adjudications Officers are reminded to follow the National Standard Operating Procedures (SOP) for adjudicating I-539 extension of stay or change of nonimmigrant status requests for B nonimmigrants. The guidance outlined in this section is intended to supplement the information found in the SOP. Questions may be directed to Headquarters staff officers Katherine Harris or Craig Howie, through appropriate channels.

Attachment

Appendix 6: Proposed B rule on length of B stay and change of status to F-1

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Proposed Rules

18065

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Parts 214, 235 and 248**

[INS No. 2176-01]

RIN 1115-AG43

Limiting the Period of Admission for B Nonimmigrant Aliens**AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Proposed rule.

SUMMARY: The Immigration and Naturalization Service (Service) is proposing to amend its regulations by eliminating the minimum admission period of B-2 visitors for pleasure, reducing the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months, and establishing greater control over a B visitor's ability to extend status or to change status to that of a nonimmigrant student. These changes will enhance the Service's ability to support the national security needs of the United States. These regulatory modifications are within the Service's authority under sections 214(a) and 248 of the Immigration and Nationality Act (Act) and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference the INS No. 2176-01 on your correspondence. Comments may also be submitted electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2176-01 in the subject heading. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION:**Background***What Is a B Nonimmigrant Alien?*

A B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B-1) or a temporary visit for pleasure (B-2). Section 101(a)(15)(B) of the Act defines the visitor classification as:

An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

Based on the statutory language, the Service has long held a B-1 nonimmigrant to be one seeking admission for legitimate activities of a commercial or professional nature such as meetings, conferences, or consultations in the United States in connection with the conduct of international business and commerce. A B-2 nonimmigrant is one seeking admission for activities relating to pleasure such as touring, family visits, or for purposes of receiving medical treatment.

Service regulations at 8 CFR 214.2(b)(1) currently provide that a B-1 or B-2 visitor may be admitted for an initial period of not more than 1 year. B nonimmigrants may request extensions of the period of admission by filing Form I-539, Application to Extend/Change Nonimmigrant Status.

What Is the Service Proposing to Change?

The Service is proposing to eliminate the minimum period of admission for a B-2 nonimmigrant visitor for pleasure, currently a 6-month admission. In place of the minimum period of admission for B-2 visitors, the Service is proposing that both B-1 and B-2 visitors will be admitted for a period of time that is fair and reasonable for the completion of the purpose of the visit.

The Service is also proposing to reduce the maximum period of admission for B-1 and B-2 visitors from 1 year to 6 months. The maximum increment of extension of stay will remain 6 months, and this 6-month maximum will apply to all B-1 and B-2 visitors.

This rule also restates explicitly the general requirement for extensions of status, to provide that an alien requesting an extension of either B-1 or B-2 status bears the burden of proving that he or she has the adequate financial resources to continue his or her

temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad.

Finally, the rule proposes to establish greater control over a B visitor's eligibility to change to a student nonimmigrant status.

Why Is the Service Proposing To Eliminate the Minimum Admission Period for a B-2 Nonimmigrant Visitor for Pleasure?

As previously noted, Service regulations at 8 CFR 214.2(b)(2) currently provide that an alien seeking admission to the United States as a B-2 visitor for pleasure will be granted a minimum 6-month period of admission. The 6-month period is granted to the alien regardless of whether the alien plans to stay in the United States for a few days or for the entire 6-month period. The Service implemented this 6-month minimum admission period many years ago to reduce filings of extensions of stays from aliens who develop a need to stay in the United States longer than the initial period of admission.

The Service views the proposal to eliminate the minimum admission period for B-2 visitors for pleasure as reasonable and within the Service's authority under section 214(a) of the Act. This proposal also comports with the Act's requirements that the Service maintain control of the alien population within the United States. This is especially important in light of the attacks of September 11, 2001.

Under this proposed rule, both B-1 visitors for business and B-2 visitors for pleasure will be granted a period of admission that accurately comports with the stated purpose of the visit. Eliminating the minimum period of admission and establishing a fair and reasonable period of admission for B-2 visitors for pleasure, as modeled on the existing policy used to determine periods of admission for B-1 visitors for business, will lessen the probability that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

While inspecting Service officers will make every effort to take into account language and cultural differences when eliciting the information needed to determine a reasonable period of admission, the burden still rests with the alien to adequately establish the precise nature and purpose of the visit.

Because the vast majority of B-1 and B-2 nonimmigrants do not have a stated need to remain in the United States for more than 30 days, it is reasonable to expect that most will depart within that time frame. Accordingly, in any case

18066

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Proposed Rules

where there is any ambiguity whether a shorter or longer period of admission would be fair and reasonable under the circumstances, a B-1 or B-2 nonimmigrant should be admitted for a period of 30 days. This period is neither a minimum nor a maximum, and the inspecting Service officer will be authorized to admit a B nonimmigrant for a shorter period or for a longer period (not to exceed 6 months), depending on the circumstances and the stated purpose of the alien's visit to the United States.

Why Is the Service Proposing To Reduce the Maximum Admission Period for B-1 and B-2 Visitors From 1 Year to 6 Months?

As previously noted, Service regulations at 8 CFR 214.2(b)(1) currently provide that a B-1 visitor for business or B-2 visitor for pleasure may be admitted for a period of up to 1 year. As the attacks of September 11, 2001, demonstrated, this generous period of stay is susceptible to abuse by aliens who seek to plan and execute acts of terrorism. Virtually all B visitors with legitimate business or tourism interests are able to accomplish the purposes of their visits in less than 6 months. Accordingly, it is proposed that the maximum period of admission for B-1 and B-2 visitors be reduced from 1 year to 6 months for each admission. In addition to promoting the security of the United States, this change will reduce the likelihood that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

Will B Visitors Be Able To File Requests for Extensions of Stays?

Under the proposed rule, all B visitors for business or pleasure will continue to be eligible to apply for extensions of stay, but only in cases that have resulted from unexpected events (such as an event that occurs that is out of the alien's control and that prevents the alien from departing the United States), compelling humanitarian reasons, such as for emergency or continuing medical treatment, or as Service policy may direct.

In addition, this proposed rule recognizes that a few B nonimmigrants enter for specific, legitimate reasons that, by their very nature, can require a stay of longer than 6 months. Those nonimmigrants, enumerated at proposed § 214.2(b)(6), who are lawfully continuing in those activities may also apply for extension of status.

All such requests, made on Form I-539, Application to Extend/Change Nonimmigrant Status, must be timely

filed and non-frivolous, and the alien must document that he or she is maintaining an unrelinquished residence abroad and has adequate financial resources to continue the temporary stay. Documentary evidence showing ties to the alien's country of residence and possession of sufficient financial means to remain in the country for the requested period of time can include such items as current bank records and lease or real property ownership documents.

The Service believes that the vast majority of aliens seeking admission as B visitors will be able to complete their stays in the United States within the period of time granted by the inspecting Service officer. The burden will be on the arriving alien to adequately explain to the inspecting Service officer at the time of admission the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Requests for extensions of stay only heighten the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

Will the Proposed Rule Affect the Status of B-1 or B-2 Visitors Already Admitted to the United States?

The new admission procedures under this rule will not affect aliens who were admitted to the United States as B-1 or B-2 visitors for business or pleasure at any time prior to the effective date of a final rule, which will be published in the **Federal Register** at a later date. However, B-1 or B-2 nonimmigrants who were admitted to the United States before the effective date of the final rule, but who apply for an extension of nonimmigrant status on or after that effective date, will be subject to the heightened requirements for extension of stay and to the 6-month limit on such extensions.

What Changes Is the Service Proposing Regarding a B Visitor's Ability To Change Nonimmigrant Status to That of Student?

Current Service regulations at 8 CFR part 248 allow for the change of a B nonimmigrant to the status of a nonimmigrant F or M student. While the proposed rule does not alter the ability of a B nonimmigrant to change nonimmigrant status to that of a student, it does establish a requirement that the alien make this intent known when he or she initially applies for admission to the United States as either a B-1 or B-2 visitor. If the alien has already received any Forms I-20, Certificate of Eligibility for Nonimmigrant Student, from one or more approved schools,

indicating that the alien has been accepted for enrollment, the alien must also present those forms to the inspecting Service officer at the time of the application for admission as a B visitor.

The Service has long accommodated prospective alien students by allowing them to enter the United States in B nonimmigrant status and visit the campuses where the student has been admitted, and then allowing the prospective student to file Form I-539 in order to change nonimmigrant status once the student has made a decision as to which school to attend. While the Service does not intend to discontinue this accommodation, it is reasonable to expect an intending nonimmigrant student to be honest about the ultimate purpose of his or her admission when being questioned by the inspecting Service officer. This intent must be made known to the inspecting Service officer regardless of whether the alien's B visa is annotated with the words, "Prospective Student."

Therefore, the Service proposes at 8 CFR 248.1(c)(2) to require a prospective alien student to state this purpose to the inspecting Service officer, and present any Forms I-20 that the alien has received, and to require the officer to make an annotation on the alien's Form I-94, Arrival-Departure Record, that reflects the alien's intent. Aliens who file an application for change of nonimmigrant status in order to change to student status without a Form I-94 that has been annotated by an inspecting Service officer will be denied the change of nonimmigrant status. Such aliens will be required, instead, to follow the regular process to seek an F or M nonimmigrant student visa from a consular officer abroad. By implementing this change, the Service intends to gain greater control over the process by which a B nonimmigrant can change status to that of either an F or M nonimmigrant student.

The Service notes that Canadian citizens (and certain Canadian permanent residents and other aliens described in 8 CFR 212.1(a)) generally are not required to obtain nonimmigrant visas or to be issued a Form I-94 upon entry into the United States. However, the Service proposes to amend 8 CFR 235.1(f)(1)(i) to provide that prospective Canadian students who intend to enter the United States to visit schools and who intend to remain in the United States and change nonimmigrant status to that of an F or M student will be required to make this declaration when applying for admission. The prospective Canadian student will be issued a Form I-94 inscribed with a notation that

reflects the alien's intent to change to student status.

The requirement that a B visitor must have stated his or her intention as a prospective student at the time of admission in B nonimmigrant status, in order to be eligible for change of status to an F or M nonimmigrant student, will be applied only to aliens who are admitted as B visitors on or after the effective date of a final rule. Because aliens who were admitted as B visitors prior to that effective date will not have been required to state their intention as a prospective student at the time of admission, they will not be subject to that limitation if they apply for change of status to F or M status. However, any alien who applies for and is granted an extension of B nonimmigrant status after the effective date of this final rule will not be eligible for change of status to F or M status. Allowing such aliens (who would already have been present in the United States as a B visitor for many months, even one year) to apply for change of status to F or M status would be inconsistent with the basic premise of this rule, which is to allow a limited accommodation for prospective students, who have already been admitted to one or more schools, to enter the United States briefly before deciding which school at which they will enroll.

Finally, the Service takes note of a related interim rule, (published elsewhere in this issue of the **Federal Register**), which stipulates that no person who has entered the United States as a B nonimmigrant may enroll in a course of study or otherwise take action inconsistent with his or her B status unless the Service has already approved his or her application for change of status to that of an F or M nonimmigrant student. That separate rule, which takes effect upon publication, complements the provisions of this proposed rule as it relates to a change of status from B-1 or B-2 visitor status to that of an F or M nonimmigrant.

What Continuing Obligations Do All B Nonimmigrants Have During the Time They Remain in the United States?

The Service notes that, under the existing provisions of section 261(a) of the Act, an alien who remains in the United States for a period of 30 days or more (other than an A or G nonimmigrant) is subject to the requirements for registration of aliens. Nonimmigrant aliens register initially using the Form I-94, Arrival-Departure Record. However, aliens who are subject to the registration requirements are also obligated, under section 265(a) of the

Act, to notify the Service of each change of address within 10 days of such change, by submitting Form AR-11 to the Service. The obligation to notify the Service of each change of address applies to all B nonimmigrants (indeed, all nonimmigrants other than those in A or G status) who remain in the United States for more than 30 days, regardless of whether their continued stay is pursuant to their initial admission or as a result of a change or extension of status.

The change of address requirements are set forth in the existing law and regulations. Accordingly, the Service does not need to propose changes in this rule to implement them. However, the Service is restating these existing requirements here for the benefit of readers, so that aliens who apply for nonimmigrant status will be advised of them.

What Happens if a B Visitor Overstays His or Her Period of Stay?

While this proposed rule does not address the issue of nonimmigrant aliens overstaying authorized periods of stay, the Service notes that an existing law, section 222(g) of the Act, provides for the automatic voidance of a nonimmigrant visa at the conclusion of a period of stay if the alien remains in the United States longer than the period of authorized admission. All B visitors should be aware of this provision of the law and are responsible for remaining in lawful nonimmigrant status while within the United States. Under section 222(g) of the Act, a B visa (including a multiple-entry visa-a visa that is usually valid for a number of years and allows the bearer to make multiple applications for admission to the United States without having to obtain a new visa for each admission) shall be void if the alien who entered the United States as a B visitor overstays his or her authorized period of admission. Thereafter, the alien would not be able to re-apply for admission to the United States using that same visa, but would be required to seek a new B visa or other appropriate visa from a consular officer abroad.

Any nonimmigrant admitted to the United States bears the burden of maintaining legal status during the period of admission that has been granted by the inspecting Service officer. The Service cannot emphasize enough the importance of maintaining lawful status while in the United States. See section 212(a)(9)(B) of the Act for more information on the important and far-reaching implications of unlawful presence and the impact that unlawful presence may have on an alien's future

ability to reapply for a nonimmigrant visa, for admission to the United States, or for adjustment of status to that of a lawful permanent resident.

Aliens should note that the statute provides an accommodation to nonimmigrants with pending applications for extension of stay or change of status if certain requirements have been met. Extension or change of status, however, will only be granted in cases where the Service deems the request to be legitimate and to meet the new criteria specified in this rule. Such requests, made on Form I-539, must be filed prior to the expiration of the alien's authorized admission, subject to a narrow exception where the delay was caused by extraordinary circumstances beyond the control of the alien. See 8 CFR 214.1(c)(4) and 248.1(b), respectively. Also, an alien who has filed Form I-539 to request an extension of stay is expected to depart from the United States upon the expiration of the requested extension regardless of whether the alien has received a copy of the Service's decision on the application for extension of stay.

Request for Comments

The Service is seeking public comments regarding this proposed rule. The Service notes that, in view of the national security needs of the United States, public comment on this proposed rule is being limited to 30 days. The Service requests that parties interested in commenting on the proposals contained within this rule submit comments on or before May 13, 2002, as the Service will not extend the comment period.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to nonimmigrant aliens visiting the United States as visitors for business or pleasure. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

18068

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Proposed Rules

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraphs (b)(1) and (b)(2) and by adding a new paragraph (b)(6), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(1) *General.* Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than 6 months and may be granted extensions of temporary stay in increments of not more than 6 months each. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed 15 days and are not eligible for extensions of stay.

(2) *Specific requirements for admission of B-1 and B-2 visitors.* (i) *Initial admission.* The burden is on the arriving alien to adequately explain to the inspecting Service officer the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Any B-1 or B-2 visitor who is found otherwise admissible will be admitted for a period of time that is fair and reasonable for the completion of the stated purpose of the visit, provided that any required passport is valid as specified in section 212(a)(7)(B)(i) of the Act. If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, in light of the stated purpose of the alien's visit, the alien will be admitted for a period of 30 days.

(ii) *Change of status to nonimmigrant student.* An alien may be admitted in B-1 or B-2 visitor status as a prospective student (that is, an alien who intends to remain in the United States and apply for change of nonimmigrant status as an F or M student at an approved school), but the alien must state this intent at the time he or she applies for admission to the United States as a B nonimmigrant. The burden is on the prospective student, applying for admission as a B-1 or B-2 visitor, to explain to the inspecting Service officer that the alien's ultimate purpose is to attend school in either F or M nonimmigrant status, whether or not the alien's B nonimmigrant visa has been annotated as a "prospective student" by a consular officer abroad. (This requirement also applies with respect to Canadian citizens and certain nationals, see § 235.1(f)(1)(i) of this chapter.) If an alien has already received any currently-valid Forms I-20 from one or more approved schools, indicating that the alien has been accepted for enrollment, the alien must also present those Forms to the inspecting Service officer at the time of the application for admission as a B visitor. The inspecting Service officer will make a notation to the alien's Form I-94 reflecting that he or she is a prospective student. See 8 CFR part 248 for a discussion of change of nonimmigrant status for B-1 or B-2 visitors to that of an F or M nonimmigrant student.

* * * * *

(6) *Requests for extensions.* (i) *Eligibility.* An alien admitted in B-1 or B-2 status may apply for an extension of stay using Form I-539, Application to Extend/Change Nonimmigrant Status. The alien bears the burden of proving that he or she has the adequate financial resources to continue his or her temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad. An extension, if granted, will be for a fair and reasonable period, not to exceed 6 months, as determined under the circumstances as established by the alien, and based on information available to the Service.

(ii) *General standards.* In general, except as the Service's publicly-stated policy may direct, the Service will grant an extension of status only in the following circumstances:

(A) The alien establishes that an unexpected circumstance (that is, a documented and significant situation or event that is out of the alien's control) prevents the alien from departing the United States at the conclusion of the granted period of admission (as noted

on the Form I-94, Arrival-Departure Record);

(B) An extension is appropriate for compelling humanitarian reasons, including but not limited to situations involving an alien's new or continued medical treatment, the need of an alien parent to stay with his or her minor child receiving medical treatment or specialized education in the United States, or the need of an alien adult to attend to an acutely ill immediate family member who is receiving medical treatment;

(C) The alien is a member of a religious denomination coming solely and temporarily to do missionary work in behalf of a religious denomination, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations;

(D) The alien is establishing a new office, as provided at paragraph (l)(7)(i)(A)(3) of this section relating to intra-company transfers;

(E) The alien is the personal or domestic servant of an alien or United States citizen, as outlined at § 274a.12(c)(17)(i) and (ii) of this chapter;

(F) The alien is an employee of a foreign airline engaged in international transportation of passengers or freight, as outlined at § 274a.12(c)(17)(iii) of this chapter; or

(G) The alien owns a home in the United States and occupies that home on a seasonal or occasional basis only.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 235.1 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 235.1 Scope of examination.

* * * * *

(f) * * *

(1) * * *

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States: *provided, however*, that a prospective student who is seeking admission as a B nonimmigrant and whose intent is to remain in the United States and change nonimmigrant status to that of an F or M nonimmigrant student is required to state such intent to the inspecting Service officer at the time of admission, to present any currently-valid Forms I-20 that the student has received from an approved school, and to complete a Form I-94;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

6. Section 248.1 is amended by adding paragraph (c)(2) to read as follows:

§ 248.1 Eligibility.

* * * * *

(c) * * *

(2) A nonimmigrant who is admitted as a B-1 or B-2 visitor under section 101(a)(15)(B) of the Act on or after (the effective date of a final rule to be published in the **Federal Register**), may change nonimmigrant classification to that of an F or M nonimmigrant student only if the B-1 or B-2 visitor had stated such intent as a prospective student at the time he or she applied for admission to the United States as a B nonimmigrant, as provided in 8 CFR 214.2(b)(2)(ii). (This requirement also applies with respect to Canadian citizens and certain Canadian nationals, see 8 CFR 235.1(f)(1)(i).) A B nonimmigrant applying to change nonimmigrant status to that of an F or M nonimmigrant student under the provisions of § 248.3 must submit, with the application to change B nonimmigrant status, a copy of the Form I-94 that contains an annotation reflecting the alien's prospective student intent, or the application for change of status will be denied. An alien who has been granted an extension of B nonimmigrant status on or after (the effective date of a final rule to be published in the **Federal Register**) is not eligible to apply for change of status to that of an F or M nonimmigrant student.

Dated: April 9, 2002.

James W. Ziglar,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-8927 Filed 4-9-02; 1:54 pm]

BILLING CODE 4410-10-P

Appendix 7: NAFSA compiled version of proposed INS SEVIS reg

| Rule text | Notes and citation guide |
|---|---|
| <p>Proposed INS SEVIS rule [67 Fed.Reg. 34862 (5/16/02)] Section of the proposed rule amending 8 CFR 214.2(f) and 214.3</p> | <p>Compilation version: May 16, 2002</p> |
| <p><i>NAFSA compiled this version of how the INS proposed rule would alter the current regulations at 8 CFR 214.2(f) and 214.3. This compilation does not include proposed changes to 8 CFR 214.2(m) or (j).</i></p> | |
| <p>Style Key:</p> | |
| <p>This reflects the current rule text unaltered by the proposed rule This reflects the current rule text removed by the proposed rule <u>This reflects new rule text added by the proposed rule</u></p> | |
| <p>(f) Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs -</p> | |
| <p>(1) Admission of student --</p> | <p>8 CFR § 214.2(f)(1): Admission in F-1 status</p> |
| <p>(i) Eligibility for admission. A nonimmigrant student and his or her accompanying spouse and minor children may be admitted into the United States in F-1 and F-2 classifications for duration of status under section 101(a)(15)(F)(i) of the Act, if the student:</p> | <p>(f)(1)(i)</p> |
| <p>(A) Presents a properly completed Form I-20 A-B/I-20 ID, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which is issued by a school approved by the Service for attendance by foreign students;</p> | |
| <p>(B) Has documentary evidence of financial support in the amount indicated on the Form I-20 A-B/I-20 ID; and</p> | |
| <p>(C) For students seeking initial admission only, intends to attend the school specified in the student's visa except where the student is exempt from the requirement for a visa, in which case the student must intend to attend the school indicated on the Form I-20 A-B/I-20 ID; <u>and</u></p> | |
| <p><u>(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.</u></p> | <p>New paragraph, adds language implementing INA 214(l)</p> |
| <p>(ii) Disposition of Form I-20 A-B/I-20 ID. Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall</p> | <p>(f)(1)(ii)</p> |

| Rule text | Notes and citation guide |
|---|--|
| <p>be referred to as Form I-20 A-B and the I-20 ID (Student) Copy shall be referred to as the I-20 ID. When an F-1 student applies for admission with a complete Form I-20 A-B, the inspecting officer shall:</p> <p>(A) Transcribe the student's admission number from Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);</p> <p>(B) Endorse all copies of the Form I-20 A-B;</p> <p>(C) Return the I-20 ID to the student; and</p> <p>(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)</p> | |
| <p><u>(iii) Use of SEVIS. On January 30, 2003, the use of the student and Exchange Visitor Information System (SEVIS) will become mandatory. As of that date, the student must present a Form I-20 issued through SEVIS in order to be admitted under this paragraph (f).</u></p> | <p>(f)(1)(iii)</p> <p>New paragraph (f)(1)(iii) proposes a SEVIS mandatory compliance date of January 30, 2003.</p> |
| <p><u>(iv) Disposition of SEVIS Form I-20. SEVIS will generate a Form I-20. When an F-1 student applies for admission with a completed SEVIS Form I-20, the inspecting officer shall transcribe the alien's admission number from Form I-94 onto his or her SEVIS Form I-20 (for students seeking initial admission only); endorse the SEVIS Form I-20; and return the SEVIS Form I-20 to the alien.</u></p> | <p>(f)(1)(iv)</p> <p>New paragraph (f)(1)(iv) on what the inspecting officer records on SEVIS I-20 (I-94 # and an "endorsement")</p> |
| <p>(2) I-20 ID. An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO) as defined in 8 CFR 214.3(l)(1)(i).</p> | <p><u>8 CFR 214.2(f)(2): Safekeeping I-20</u></p> |
| <p>(3) Spouse and minor children following to join student. The spouse and minor children following to join an F-1 student are eligible for admission to the United States if the F-1 student is, or will be within sixty days 30 days, enrolled in a full course of study or, if the student is engaged in approved practical training following completion of studies. The eligible spouse and minor children of an F-1 student may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO. A new Form I-20 A-B is</p> | <p><u>8 CFR 214.2(f)(3): Dependents following to join</u></p> |

| Rule text | Notes and citation guide |
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| <p>required where there has been any substantive change in the information on the student's current I-20 ID.</p> | |
| <p>(4) Temporary absence. An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at a Service-approved educational institution, if the student presents:</p> <p>(i) A current I-20 ID properly endorsed by the DSO for reentry if there is no substantive change on the most recent I-20 ID; or</p> <p>(ii) A new Form I-20 A-B if there has been any substantive change in the information on the student's most recent I-20 ID, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service-approved institution, or who has advanced to a higher level of study.</p> | <p><u>8 CFR 214.2(f)(4): Temporary Absence</u></p> |
| <p>(5) Duration of status -- (i) General. Duration of status is defined as the time during which an F-1 student is pursuing a full course of <u>studies study</u> at an educational institution <u>school</u> approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States, <u>except that an F-1 student who is admitted to attend a public high school is restricted to an aggregate of twelve months of study at any public high school(s). An F-1 student may be admitted for a period up to 30 days before the start of the course of study. An F-1 student who has completed a course of study will be allowed an additional 60-day period to prepare for departure from the United States, but an F-1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for this additional 60 days.</u> The student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies. Duration of status also includes the period designated by the Commissioner as provided in paragraph (f)(5)(vi) of this section.</p> | <p><u>8 CFR 214.2(f)(5): Duration of status</u></p> <p>(f)(5)(i) Adds provision that F-1 student cannot be admitted to U.S. sooner than 30 days before start of course of study. Also, places a period after "following completion of studies." The 60-day "grace period" is therefore now in a sentence separate from the direct "definition" of duration of status.</p> |
| <p>(ii) Change in educational levels. An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational level is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.</p> | <p>(f)(5)(ii)</p> |
| <p>(iii) Annual vacation. An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student</p> | <p>(f)(5)(iii)</p> |

| Rule text | Notes and citation guide |
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| <p>attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.</p> | |
| <p>(iv) [Reserved] Illness or medical conditions. A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.</p> | <p>(f)(5)(iv) removed and reserved</p> <p>An altered version of the medical exception to the full course of study requirement is moved to (f)(6)(iii)(B) in the proposed rule.</p> |
| <p>(v) Emergent circumstances as determined by the Commissioner. Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the Federal Register, an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the Federal Register will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.</p> | <p>(f)(5)(v)</p> |
| <p>(vi) Extension of duration of status. The Commissioner may, by notice in the Federal Register, at any time she determines that the H-1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H-1B application, the duration of status of any F-1 student on behalf of whom an employer has timely filed an application for change of status to H-1B. The alien, according to 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay in order to obtain this extension of stay. An F-1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her F nonimmigrant stay. An extension made under this paragraph applies to the F-2 dependent aliens.</p> | <p>(f)(5)(vi)</p> |

| Rule text | Notes and citation guide |
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| <p>(6) Full course of study -- (i) General. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. <u>A course of study at an institution not approved for attendance by foreign students as provided in § 214.3(a)(3) does not satisfy this requirement.</u> A “full course of study” as required by section 101(a)(15)(F)(i) of the Act means:</p> <p>(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;</p> <p>(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;</p> <p>(C) Study in a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;</p> <p>(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or</p> <p>(E) Study in a <u>curriculum at an approved primary elementary</u> school or academic high school curriculum <u>which is</u> certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.</p> | <p><u>8 CFR 214.2(f)(6): Full course of study</u></p> <p>(f)(6)(i)</p> <p>The proposed rule does not change the “full course of study” definitions in paragraphs A-D. The only change to paragraph E is to reflect INA 214(l), which makes public elementary schools ineligible for F-1 designation... and so the proposed rule adds the word “approved” to this paragraph. A new paragraph G is added to address the issue of distance and on-line education.</p> |

| Rule text | Notes and citation guide |
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| <p>(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the Federal Register shall be deemed to be engaged in a “full course of study” if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.</p> | |
| <p><u>(G) For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted if taken on-line or through distance education in a course that does not require the student’s physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F-1 student’s course of study is in a language study program, or elementary or secondary school, no on-line or distance education classes may be considered to count toward classroom hours or credit.</u></p> | <p>New paragraph (f)(6)(i)(G), covering distance education and on-line coursework, providing that no more than the equivalent of one on-line/distance ed class or 3 credits per session may be counted towards the “full course of study” requirement.</p> |
| <p><u>(H) On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.</u></p> | <p>This language used to be at 8 CFR § 214.2(f)(6)(iii), the “reduced course load” provision. They simply moved the language here, to the “full course of study” section.</p> |
| <p>(ii) Institution of higher learning. For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. Vocational or business schools which are classifiable as M-1 schools are provided for by regulations under 8 CFR 214.2(m).</p> | <p>(f)(6)(ii)</p> |
| <p>(iii) Reduced course load. The designated school official may advise <u>allow</u> an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course-level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full</p> | <p>(f)(6)(iii) Reduced course load provision. Proposed rule adds requirement that RCL must still consist of <i>some</i> course of study, unless due to medical reasons. Specifies that a student who drops below a full course of study without prior approval of DSO will be considered “out of status.”</p> |

| Rule text | Notes and citation guide |
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| <p><u>course of study, as provided in this paragraph (f)(6)(iii). A reduced course load must still consist of some course of study, unless the reduction is for reasons of illness or medical condition. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status.</u></p> | |
| <p><u>(A) Academic difficulties. The DSO may authorize a reduced course load on account of initial difficulty with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement.</u></p> | |
| <p><u>(B) Medical conditions. The DSO may authorize a reduced course load due to a student's illness or medical condition, if the student has provided medical documentation from a licensed doctor to the DSO to substantiate the authorization. The DSO is required to reauthorize the drop below full time for each new term, session, or semester. However, in no case may the authorization exceed one year. The student must resume a full course of study within one year from the date of the original authorization in order to maintain student status.</u></p> | <p style="text-align: right;">(f)(6)(iii)(B)</p> <p>New medical condition exception to full course of study adds the requirement that the condition is substantiated by "medical documentation from a licensed doctor," and that an RCL for medical reasons cannot last for more than one year.</p> |
| <p><u>(C) Completion of course of study. The DSO may authorize a reduced course load in the student's final term, semester, or session needed to complete the course of study, if the student is not required to take additional courses to satisfy the requirements for completion.</u></p> | <p>The proposed rule requires a DSO to authorize RCL in advance even for the "final semester of study" reason.</p> |
| <p><u>(D) Reporting requirements for non-SEVIS schools. A DSO must report to the Service any student who is authorized to reduce his or her course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's current Form I-20ID along with Form I-538 to STSC indicating the date and reason that the student was authorized to drop below full time status. Similarly, the DSO will report to the Service no more than 21 days after the student has resumed a full course of study by submitting a current copy of the student's Form I-20ID to STSC indicating the date a full course of study was resumed and the new program end date with Form I-538, if applicable.</u></p> | <p style="text-align: right;">(f)(6)(iii)(D)-(E)</p> <p>Proposed rule adds reporting requirement for reduced course load authorizations. (D) is non-SEVIS reporting procedure, (E) is SEVIS reporting procedure. 21-day reporting window.</p> |
| <p><u>(E) SEVIS reporting requirements. In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study. If an extension of the program end date is required due to the drop below a full course of study, the DSO must update SEVIS by completing a new</u></p> | |

| Rule text | Notes and citation guide |
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| <p><u>SEVIS Form I-20 with the new program end date in accordance with paragraph (f)(7) of this section.</u></p> <p><u>(iv) Concurrent enrollment. An F-1 student may be enrolled in two different Service approved schools at one time as long as the enrollment in both schools amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I-20, and conduct subsequent certifications and updates to the Form I-20. This DSO is also responsible for all of the reporting requirements to the Service.</u></p> <p>(7) Extension of stay -- (i) General. An F-1 student <u>who</u> is admitted for duration of status. The student is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F-1 student who is <u>currently maintaining status but is</u> unable to complete a full course of study in a timely manner must apply, in a 30-day period before the completion <u>prior to the program end</u> date on the Form I-20 A-B, to the DSO for a program extension pursuant to paragraph (f)(7)(iii) of this section.</p> <p>(ii) Completion date on Form I-20 A-B. When determining the program completion date on Form I-20 A-B, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. A grace period of no more than one year may be added onto the DSO's estimate.</p> <p>(iii) Program extension for students in lawful status. An F-1 student who is unable to meet the program completion date on the Form I-20 A-B may be granted a program an extension by the school, <u>DSO</u> if the DSO certifies on a Form I-538 that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or <u>medically</u> documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extensions. The DSO must notify the Service within 30 days of any approved program extensions by forwarding to the Service data processing center a certification on Form I-538 and the top page of a new Form I-20 A-B showing a new program completion date. A DSO may not grant an extension if the student did not apply for an extension until after the program end date noted on the Form I-20. An F-1 student who is unable to complete the educational program within the time listed on Form I-20 and who</p> | <p>(f)(6)(iv)</p> <p>New provision that recognizes legitimacy of concurrent enrollment. Makes degree-granting school responsible for I-20 issuance and SEVIS reporting.</p> <p>8 CFR 214.2(f)(7): Extensions</p> <p>(f)(7)(i)</p> <p>(f)(7)(ii)</p> <p>The proposed reg eliminates the provision in the current rule that allows a DSO to add a grace period of up to 1 year to the program completion date. Also replaces "average <i>foreign</i> student" with "average student."</p> <p>(f)(7)(iii)</p> <p>Proposed rule specifies that a student must apply for program extension <i>before</i> end date on I-20.</p> |

Rule text

is ineligible for program extension pursuant to this paragraph (f)(7) is considered out of status. If eligible, the student may apply for reinstatement under the provisions of paragraph (f)(16) of this section.

~~(iv) Failure to complete the educational program in a timely manner. An F-1 student who is unable to complete the educational program within the time period written on the Form I-20 A-B and who is ineligible for program extension pursuant to paragraph (f)(7)(iii) of this section is considered to be out of status. Under these circumstances, the student must apply for reinstatement under the provisions of paragraph (f)(16) of this section. Notification. Upon granting a program extension, a DSO at a non-SEVIS school must immediately submit notification to STSC using Form I-538 and the top page of Form I-20A-B showing the new program completion date. For a school enrolled in SEVIS, a DSO may grant a program extension only by updating SEVIS and issuing a new Form I-20 reflecting the current program end date. A DSO may grant an extension any time prior to the program end date listed on the student's original Form I-20.~~

(8) School transfer -- (i) Eligibility. An F-1 student who is maintaining status may transfer to another Service-approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(ii) Transfer procedure.

(A) Non-SEVIS School to Non-SEVIS school. To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k); from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at the school the student is transferring to is responsible for determining that the student has been maintaining status at his or her previous school and is eligible for transfer to the new school. The transfer will be effected only if the F-1 student completes the Student Certification portion of the ~~Form I-20 A-B~~ and returns the Form to a designated school official on campus within 15 days of beginning attendance at the new school the program start date

Notes and citation guide

(f)(7)(iv)

The “unable to complete” language of this paragraph has been moved to (f)(7)(iii). The proposed paragraph (f)(7)(iv) contains notification instructions for both SEVIS and non-SEVIS schools. Non-SEVIS process is same as current extension notification provisions. Proposed rule at (f)(7)(iii) provides that extensions may not be processed after the I-20 end date; (f)(7)(iv) specifies that a DSO can grant an extension any time prior to the I-20 end date.

8 CFR 214.2(f)(8): Transfers**(f)(8)(i)****(f)(8)(ii)**

Proposed rule add requirement that DSO determine validity of status of transferring student *before* issuing a transfer I-20. Also, changes obligation of student to present completed I-20 to receiving school's DSO from “within 15 days of beginning attendance” (current rule) to within 15 days of the program start date on the I-20.

| Rule text | Notes and citation guide |
|---|--------------------------|
| <p><u>listed on Form I-20.</u> (iii) Notification. Upon receipt of the student's Form I-20 A-B, the DSO must (A) N note "transfer completed on (date)" on the student's I-20 ID in the space provided for the in DSO's remarks, thereby acknowledging the student's attendance; (B) R return the Form I-20 ID to the student; (C) S submit the I-20 School copy of the Form I-20 to the Service's Data Processing Center STSC within 30 <u>21</u> days of receipt from the student; and (D) F forward a photocopy of the Form I-20 A-B School copy to the school from which the student transferred.</p> | |
| <p><u>(B) Non-SEVIS school to SEVIS school. To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a SEVIS Form I-20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at the school the student is transferring to is responsible for determining that the student has been maintaining status at his or her previous school and is eligible for transfer to the new school. Once the transfer school has issued the SEVIS Form I-20 to the student indicating a transfer, the transfer school becomes responsible for updating and maintaining the student's record in SEVIS. The student is then required to notify the DSO at the new school within 15 days of the program start date listed on SEVIS Form I-20. upon notification that the student is enrolled in classes, the DSO of the transfer school must print and return an updated SEVIS Form I-20 to the student acknowledging the student's attendance and indicating the current address and that the student has completed the transfer process. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance within the 30 days required by 213.3(g)(3)(iii).</u></p> | |
| <p><u>(C) SEVIS school to SEVIS school. The student must notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as "a transfer out" and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At transfer date specified by the current DSO, the new school will be granted full access to the student's SEVIS record and becomes responsible for that student. The current school conveys authority and responsibility over that student to the new school, and will no longer have full SEVIS access to that student's record. At the point of conveyance at the end of the current semester or the expected transfer date, the new school may issue a SEVIS</u></p> | |

Rule text

Form I-20. The student is then required to notify the DSO at the new school within 15 days of the program start date listed on SEVIS Form I-20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must print and return an updated SEVIS Form I-20 to the student acknowledging the student's attendance and indicating the current address and that the student has completed the transfer process. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance within the 30 days required by 213.3(g)(3)(iii).

(D)SEVIS school to non-SEVIS school. The student must notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as "a transfer out", enter a "release" or expected transfer date, and update the transfer school as "non-SEVIS". The student must then notify the school to which the student intends to transfer of the student's intent to enroll. After the student has completed his or her current term or session, or has reached the expected transfer date, the DSO at the SEVIS school will no longer have full access to the student's SEVIS record. *At this point, if the student has notified the transfer school of his or her intent to transfer, and the transfer school has determined that the student has been maintaining status at his or her previous school, the transfer school may issue the student a Form I-20, and has notified the transfer school of his or her intent to transfer, the transfer school may issue the student a Form I-20 after determining that the student has been maintaining status at his or her previous school.* (ed. note: the italicized language appears to contain typographical errors, repeating information in an unclear way) The transfer will be effected only if the F-1 student completes the Student Certification portion of the I-20 and returns the Form to a designated school official on campus within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must note "transfer completed on (date)" in the space provided for in DSO's remarks, thereby acknowledging the student's attendance; return the Form I-20 to the student; submit the School copy of the Form I-20 to STSC within 21 days of receipt from the student; and forward a photocopy of the School copy to the school from which the student transferred.

(9) Employment -- (i) On-campus employment. On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. Employment

Notes and citation guide

8 CFR 214.2(f)(9): Employment

(f)(9)(i)

| Rule text | Notes and citation guide |
|---|--------------------------|
| <p>with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the Federal Register, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the Federal Register document. An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An F-I student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents.</p> | |
| <p>(ii) Off-campus work authorization -- (A) General. An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. The employment authorization is automatically terminated whenever the student fails to maintain status. In emergent circumstances as determined by the Commissioner, the Commissioner may suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the Federal Register.</p> | <p>(f)(9)(ii)</p> |
| <p>(B) [Reserved] Wage and labor attestation requirement. Except as provided under paragraphs (f)(9)(ii)(C) and (f)(9)(iii) of this section, a student may be authorized to accept off-campus employment only if the prospective employer has filed a labor and wage attestation pursuant to 20 CFR part 655, subparts J and K (requiring the employer to attest to the fact that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same</p> | |

| Rule text | Notes and citation guide |
|--|--------------------------|
| <p>wages and working conditions as domestic workers similarly employed.)</p> <p>(C) Severe economic hardship. If other employment opportunities are not available or are otherwise insufficient, an eligible F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses.</p> <p>(D) Procedure for off-campus employment authorization. The student must submit the application to the DSO on Form I-538, Certification by Designated School Official. The DSO may recommend the student work off-campus for one year intervals by certifying on the Form I-538 that:</p> <p>(1) The student has been in F-1 status for one full academic year;</p> <p>(2) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;</p> <p>(3) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and</p> <p>(4) Either: (i) The prospective employer has submitted a labor and wage attestation pursuant to paragraph (f)(9)(ii)(B) of this section, or (ii) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section and has demonstrated that employment under paragraph (f)(9)(i) and (f)(9)(ii)(B) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.</p> <p>(E) <u>[Reserved]</u> Wage and Labor attestation application to the DSO. An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538 after the employer has filed the labor and wage attestation. By certifying on Form I-538 that the student is eligible for off-campus employment, and endorsing the student's I-20 ID, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The endorsement on the student's I-20 ID should read "part-time employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status pursuant to 8 CFR 274a.12(b)(6)(ii) and employer-specific and</p> | |

| Rule text | Notes and citation guide |
|---|--------------------------|
| <p>therefore, exempt from the EAD requirement. The DSO must notify the Service of each off-campus employment authorization by forwarding to the Service data processing center the completed Form I-538. The DSO shall return to the student the endorsed I-20 ID.</p> | |
| <p>(F) Severe economic hardship application -- (1) <u>The applicant should submit the application for employment authorization on Form I-765, with the fee required by 8 CFR 103.7(b)(1), to the Service Center having jurisdiction over his or her place of residence, along with Form I-20, Form I-538.</u> The applicant should submit to the Service Form I-20 ID, Form I-538, and Form I-765 along with the fee required by 8 CFR 103.7(b)(1), and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraphs (f)(9)(i) and (f)(9)(ii)(B) of this section. The requirement with respect to paragraph (f)(9)(ii)(B) of this section is satisfied if the DSO certifies on Form I-538 that the student and the DSO are not aware of available employment in the area through the Pilot Off-Campus Employment Program. In areas where there are such Pilot program opportunities, this requirement is satisfied if the DSO certifies on Form I-538 that employment under the Pilot program is insufficient to meet the student's needs. The student must apply for the employment authorization on Form I-765 with the Service office having jurisdiction over his or her place of residence.</p> | |
| <p>(2) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Off-campus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status.</p> | |

| Rule text | Notes and citation guide |
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| <p>(iii) Internship with an international organization. A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization, in person, to the Service office <u>Center</u> having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, an I-20 ID endorsed for reentry by the DSO within the last 30 days <u>Form I-20 certifying eligibility for employment</u>, and a completed Form I-765, Application for Employment Authorization, with the fee required in 8 CFR 103.7(b)(1) <u>with required fee as contained in § 103.7(b)(1) of this title.</u></p> | <p style="text-align: right;">(f)(9)(iii)</p> <p>Proposed rule would replace current requirement of a recent travel signature with the requirement that the DSO certify the employment on Form I-20's employment authorization section. Clarifies that international internship employment authorization applications are to be filed with Service Centers.</p> |
| <p>(10) Practical training. Practical training is available to F-1 students who have been <u>may be authorized to an F-1 student who, at the time of filing his or her application, has been</u> lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for at least nine <u>9</u> consecutive months. <u>This provision includes students who, during their course of study, were enrolled in a study abroad program. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level.</u> Students in English language training programs are ineligible for practical training. An eligible F-1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:</p> | <p style="text-align: center;"><u>8 CFR 214.2(f)(10): Practical Training</u></p> <p>Proposed rule would allow counting time spent in study abroad programs during the course of study towards the 9 month requirement for practical training. The proposed rule also specifies that a student who has used 12 months of OPT would become eligible for another 12 months after changing to a higher educational level.</p> |
| <p>(i) Curricular practical training programs. An F-1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an established curriculum. Curricular practical training is defined to be alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. Exceptions to the nine-month in status requirement are provided for students enrolled in graduate studies which require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO on Form I-538. Upon approving the request for authorization, the DSO shall: <u>A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her I-20 ID with the DSO endorsement.</u></p> | <p style="text-align: right;">(f)(10)(i): CPT</p> |

| Rule text | Notes and citation guide |
|---|---|
| <p>(3) [Reserved] After completion of all course requirements for the degree (excluding thesis or equivalent), if the student is in a bachelor's, master's, or doctoral degree program; or</p> <p>(4) [Reserved] After completion of the course of study. A student must complete all practical training within a 14 month period following the completion of study.</p> <p>(B) Termination of practical training. Authorization to engage in practical training employment is automatically terminated when the student transfers to another school <u>or begins study at another educational level.</u></p> <p>(C) Request for authorization for practical training. A request for authorization to accept practical training must be made to the designated school official (DSO) of the school the student is authorized to attend on Form I-538, accompanied by his or her current Form I-20 ID.</p> <p>(D) Action of the DSO-<u>Non SEVIS schools.</u> In making a recommendation for practical training, a designated school official must:</p> <p>(1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;</p> <p>(2) Endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)"; and</p> <p>(3) Return to the student the Form I-20 ID and send to the Service data processing center the school certification on Form I-538.</p> | <p>The proposed rule eliminates the paragraphs (3 and 4) that allow optional practical training after completion of course requirements and after completion of course of study. The supplementary information talks about practical training after completion of studies, so hopefully this is just a drafting mistake.</p> <p>The proposed rule adds beginning study at another educational level as a ground for automatic termination of practical training. It is unclear how this will impact someone who legitimately wants to use OPT, but would also like to begin studying for a next degree.</p> |
| <p><u>(E) SEVIS process. In making a recommendation for optional practical training under SEVIS, the DSO will update the student's record in SEVIS as having been recommended for optional practical training. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment. The DSO will then print the employment page of the student's SEVIS Form I-20, and sign and date the form to indicate that optional practical training has been recommended. The F-1 student must apply to the INS Service Center for an Employment Authorization Document, on Form I-765, with the SEVIS Form I-20 employment page indicating that optional practical training has been recommended by the DSO.</u></p> | <p style="text-align: right;">(f)(10)(ii)(E)</p> <p>This new paragraph confirms that an EAD will still be required for OPT under this phase of SEVIS.</p> |

| Rule text | Notes and citation guide |
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| <p>(11) Employment authorization. The total periods of authorization for optional practical training under paragraph (f)(10) of this section shall not exceed a maximum of twelve months. Part-time practical training, 20 hours per week or less, shall be deducted from the available practical training at one-half the full-time rate. As required by the regulations at 8 CFR part 274a, an F-1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been issued an Employment Authorization Document (EAD) by the Service. An F-1 student must apply to the INS for the EAD by filing the Form I-765. The application for employment authorization must include the following documents:</p> | <p>8 CFR 214.2(f)(11): Procedures and time limits for OPT</p> <hr/> |
| <p>(i) A completed Form I-765, with the fee required by § 103.7(b)(1); and</p> | |
| <p>(ii) A DSO's recommendation for practical training on I-20 ID, <u>or, for a SEVIS school, on an updated SEVIS Form I-20.</u></p> | |
| <p>(12) Decision on application for employment authorization. The Service shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.</p> | |
| <p>(13) Temporary absence from the United States of F-1 student granted employment authorization. (i) A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.</p> | <p>8 CFR 214.2(f)(13): Travel and employment</p> <hr/> |
| <p>(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.</p> | |
| <p>(14) Effect of strike or other labor dispute. Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee, that a strike or other</p> | <p>8 CFR 214.2(f)(14): Effect of strikes, etc.</p> <hr/> |

| Rule text | Notes and citation guide |
|---|--|
| <p>labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means the facility or facilities where a labor dispute exists. The employer is prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.</p> <p>(15) Spouse and children of F-1 student.</p> <p><u>(i) Employment.</u> The F-1 spouse and children of an F-1 student may not accept employment.</p> <p><u>(ii) Study. (A) The F-2 spouse of an F-1 student may not engage in full time study, and the F-2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The F-2 spouse and child may engage in study that is avocational or recreational in nature.</u></p> <p><u>(B) An F-2 spouse or F-2 child desiring to engage in full time study, other than that allowed for a child in paragraph (f)(15)(ii)(A) of this section, must apply for and obtain a change of nonimmigrant classification to F-1, J-1, or M-1 status.</u></p> <p><u>(C) An F-2 spouse or F-2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.</u></p> | <p>8 CFR 214.2(f)(15): Spouse and children of F-1</p> <p>(f)(15)(i)</p> <p>(f)(15)(ii)</p> <p>Proposed rule's new provision prohibiting full-time study by F-2 spouse and limiting full-time study for F-2 children to elementary and secondary schooling.</p> |
| <p>(16) Reinstatement to student status -- (i) General. The <u>Service district director</u> may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, Application to Extend/<u>Change Nonimmigrant Status Time of Temporary Stay</u>, accompanied by a properly completed Form I-20A-B from the school the student is attending or intends to attend (<u>or a properly completed SEVIS Form I-20 from a SEVIS school and indicating the DSO's recommendation for reinstatement</u>). The district director may <u>consider the request</u> if the student:</p> <p>(A) <u>Has not been out of status for more than 5 months;</u></p> <p>(A) (B) Establishes to the satisfaction of the Service, <u>by a detailed showing, either that:</u></p> <p>(1) <u>that the violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, or a natural disaster. Circumstances beyond the student's control do not occur where inad-</u></p> | <p>8 CFR 214.2(f)(16): Reinstatement</p> <p>(f)(16)(i)</p> <p>Proposed provision would make students out of status for more than 5 months ineligible for reinstatement.</p> <p>Proposed rule would tighten criteria for what is seen as "beyond the student's control."</p> |

| Rule text | Notes and citation guide |
|---|---|
| <p><u>vertence, oversight, neglect, or a willful failure on the part of the student or the DSO resulted in the need for reinstatement; or (2) that the violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to receive approve reinstatement to lawful F-1 status would result in extreme hardship to the student;</u></p> | |
| <p>(B) <u>(C)</u> Is currently pursuing, or intending to pursue, a full course of study <u>in the immediate future</u> at the school which issued the Form I-20 A-B;</p> | |
| <p>(C) <u>(D)</u> Has not engaged in unauthorized employment; and</p> | |
| <p>(D) <u>(E)</u> Is not deportable on any ground other than section 244<u>237</u>(a)(1)(B) or (C)(i) of the Act.</p> | |
| <p>(ii) Decision. If the Service reinstates the student, the Service shall endorse the <u>student's copy of Form I-20-A-B</u> to indicate that the student has been reinstated <u>and</u> return the <u>I-20 ID form</u> to the student, and <u>and</u> If the Form I-20 is from a non-SEVIS school, forward <u>forward</u> the school copy of the form <u>will be forwarded</u> to the Service's processing center for data entry. <u>If the Form I-20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if</u> the Service does not reinstate the student, the student may not appeal that decision.</p> | <p>(f)(16)(ii)</p> |
| | <p><u>8 CFR 214.2(f)(17): Student's current name and address</u></p> |
| <p><u>(17) Current name and address. A student must inform the DSO and the Service of any legal changes to his or her name or any change of address, within 10 days of the change. An F-1 nonimmigrant enrolled at a SEVIS school can satisfy the requirement of notifying the Service by providing a notice of a change of address within 10 days to the DSO, who in turn shall enter the information in SEVIS within 21 days of notification by the student. An F-1 nonimmigrant student enrolled at a non-SEVIS school must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. The address provided by the student must be the actual physical location where the student resides, not a P.O. Box or an office address. In no case may the address of the DSO be used as the address of the student.</u></p> | <p>Proposed rule adds current name and address requirement mandated by IIRIRA 641</p> |

| Rule text | Notes and citation guide |
|---|--|
| <p>(2) <u>SEVIS filing. A school or school system filing a petition using SEVIS must submit all of the information required by paragraph (a)(1) of this section. To apply for certification in SEVIS, a school or school system must first contact the SEVIS system administrator via the SEVIS website to receive a temporary user identifications and password. This temporary identification and password will be valid for 30 days from issuance. After receiving the temporary identification and password the school must complete Form I-17 online in the SEVIS application. The form I-17 must then be printed and submitted by mail to the appropriate district office with supporting documentation in accordance with the regulations of this section.</u></p> | <p style="text-align: right;">8 CFR 214.3</p> <p>The proposed rule makes several changes to 8 CFR 214.3 as well. Only those paragraphs of the current rule affected by the proposed changes are included here.</p> <p>8 CFR 214.3(a): filing petitions for F or M designation</p> <p style="text-align: right;">214.3(a)(2)</p> <p>The proposed rule adds this new paragraph to specify procedures for using SEVIS for initial approval of Form I-17, for new schools. The prior paragraph (a)(2) would be renumbered (a)(3).</p> |
| <p>(F) A <u>A private elementary school.</u></p> | <p style="text-align: right;">214.3(a)(3)(i)(F)</p> <p>Proposed rule amends this paragraph to conform to IIRIRA which prohibits a public elementary school from being designated to bring F-1 students.</p> |
| <p><u>(v) The following may not be approved for attendance by foreign students:</u></p> <p><u>(A) A home school.</u></p> <p><u>(B) A public elementary school, or</u></p> <p><u>(C) An adult education program, as defined by section 203(l) of the Adult Education and Family Literacy Act, Public Law 105-220, as amended, 20 U.S.C. 9202(l), if the adult education program is funded in whole or in part by a grant under the Adult Education and Family Literacy Act, or by any other Federal, State, county or municipal funding.</u></p> | <p style="text-align: right;">214.3(a)(3)(v)</p> <p>The proposed rule adds this new paragraph, listing the types of public and publicly funded schools that cannot be designated as F-1 schools under IIRIRA 641.</p> |

Rule text

(iv) ~~Address~~ Current address where the student and any dependents physically reside (not a P.O. Box or an office address).

(v) ~~Status, i.e., full-time or part-time.~~ The student's current academic status.

(2) Reporting requirements. At intervals specified by the Service but not more frequently than once a term or session, the Service's processing center shall send each school (to the address given on Form I-17 as that to which the list should be sent) a list of all F-1 and M-1 students who, according to Service records, are attending that school. A designated school official at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above information, the names and current addresses of all F-1 or M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The designated school official must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within sixty days of the date of the request.

(3) SEVIS reporting requirements.

(i) Within 21 days of a change in any of the information contained in paragraph (e)(3) of this section, schools using the SEVIS system must update SEVIS with the current information.

(ii) Schools are also required to report within 21 days of the occurrence the following events:

(A) Any student who has failed to maintain status or complete his or her program;

(B) A change of the student or dependent's legal name or U.S. address;

(C) Any student who has graduated early or prior to the program end date listed on SEVIS Form I-20;

(D) Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and

(E) Any other notification request made by SEVIS to the DSO with regard to the current status of the student.

Notes and citation guide

8 CFR 214.3(g): record keeping and reporting requirements

214.3(g)(1)

The proposed rule modifies the list of items at 214.3(g)(1)(iv)-(v) to require the actual street address where a student and dependents live, and the student's "current academic status."

214.3(g)(2) and (3)

The "reporting requirements" section of the current regulation at 214.3(g)(2) remains unchanged. The proposed rule adds a new paragraph (g)(3), to specify SEVIS reporting requirements. Reporting windows range from 21 to 30 days after the occurrence of an event, as specified in the new paragraph.

| Rule text | Notes and citation guide |
|---|---|
| <p><u>(iii) Each term or session and no later than 30 days after the deadline for registering for classes, schools are required to report the following registration information:</u></p> <p><u>(A) Whether the student has enrolled at the school, dropped below a full course of study without prior authorization by the DSO, or failed to enroll:</u></p> <p><u>(B) The current address of each enrolled student; and</u></p> <p><u>(C) The start date of the student's next session, term, semester, trimester, or quarter.</u></p> <p>(l) Designated official -- (1) Meaning of term “designated official”. As used in §§ 214.1(b), 214.2(f), 214.2(m), <u>and 214.4 and this section</u>, a “Designated Official” or, “Designated School Official”, <u>Principal Designated School Official, or Administrative School Official</u> means a regularly employed member of the school administration whose office is located at the school <u>(and who is a regularly employed member of the school administration whose office is located at the school)</u> [Ed. note: this appears to be a drafting error, repeating the language of the phrase before it] and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The president, owner, or head of a school or school system must designate a designated official. The designated official may not delegate this designation to any other person. Each school or institution may have up to five designated officials at any one time. In a multi-campus institution, each campus may have up to five designated officials at any one time. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time.</p> <p><u>(i) Principal Designated School Official (PDSO) and Designated School Official (DSO). A PDSO and DSO must be a United States citizen or Lawful Permanent Resident of the United States. The PDSO and any other DSO must be named by the president, owner, or head of a school or school system. The PDSO and DSO may not delegate this designation to any other person. Each school must have a designated PDSO. The Service will use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations as well as any system alerts generated by SEVIS. In all other respects the PDSO and DSO will share the same responsibilities. Each school may have up to five designated officials at any one time.</u></p> | <p style="text-align: right;">8 CFR 214.3(l)</p> <p style="text-align: right;">214.3(l)(1)</p> <p>The proposed rule would add two new categories of “designated official”: Principal Designated School Officials (PDSO) and Administrative School Officials (ASO). Schools (or each campus in the case of schools with multiple campuses) would still be limited to only 5 school officials (including a required PDSO), but would be able to designate up to 5 ASOs as well. School districts (in the case of public schools) are still limited to 5 DSOs (including 1 PDSO) and 5 ASOs per school district. The proposed rule also specifies the duties and limits of authority for each type of designated official.</p> |

Rule text

including the PDSO. In a multi-campus school, each campus may have up to five designated officials at any one time including the PDSO. In a private elementary or public or private secondary school system, however, the entire school system is limited to five designated officials at any one time including the PDSO.

(ii) Administrative School Official (ASO). The president, owner, or head of a school or school system must name any ASO. The ASO may not delegate this designation to any other person. Each school may have up to five ASOs at any one time. The function of the ASO is limited to clerical or administrative tasks. An ASO may not sign any Form I-20, update any event in SEVIS, or perform any other duty that requires authorization of the PDSO or DSO in the regulations. A DSO or PDSO must review and approve any data entered by an ASO.

~~(2) Name, title, and sample signature. Petitions for school approval must include the names, titles, and sample signatures of designated officials. An approved school must report to the Service office having jurisdiction over it any changes in designated officials and furnish the name, title, and sample signature of the new designated official within thirty days of each change. An approved school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name and title of the new official within 21 days of the change. Any changes to the PDSO, DSO or ASO must be made by the PDSO. In its discretion the Service may reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.~~

~~(3) Statement of principal and designated official. A petition for school approval must include a statement by the principal and each designated official certifying that the official ~~has read~~ is familiar with the Service regulations relating to nonimmigrant students, namely §§ 214.1(b), 214.2(f), and 214.2(m); the Service regulations relating to change of nonimmigrant classification for students, namely §§ 248.1(e), 248.1(d), 248.3(b), and 248.3(d); the Service regulations relating to school approval, namely this section and the regulations relating to withdrawal of school approval namely, § 214.4; and affirming the official's intent to comply with these regulations. An approved school must also submit to the Service office having jurisdiction over it such a statement from any new designated official within thirty days of each change in designated official.~~

(4) SEVIS update. At the time the new official is updated in SEVIS in accordance with paragraph (l)(2) of this section, the official must also certify that he or she has read Service regulations and intends to comply with the regulations

Notes and citation guide

214.3(l)(2)-(4)

Proposed rule requires designated official changes and updates to be reported to SEVIS within 21 days of the change.

Appendix 8: Two DOS cables on Form DS-157

P 110032Z JAN 02
FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY
SPECIAL EMBASSY PROGRAM
LAHORE POUCH
BELGRADE POUCH
DUSHANBE POUCH
PESHAWAR POUCH

UNCLAS STATE 006020

E.O. 12958: N/A
TAGS: CVIS, CMGT, AUSP
SUBJECT: A NEW FORM - DS-157, SUPPLEMENTAL NONIMMIGRANT
VISA APPLICATION

1. The Department announces the introduction of a new form, Supplemental Nonimmigrant Visa Application (DS-157). Effective immediately, all male nonimmigrant visa applicants between the ages of 16 and 45, regardless of nationality and regardless of where they apply (including CA/VO/P/D and USUN), must fill out and submit to the post a DS-157 in addition to the usual Nonimmigrant Visa Application (DS-156). In the aftermath of the September 11 terrorist attacks, the use of the DS-157 is an interim measure that will allow posts to elicit information which, in some cases, will lead to a security advisory opinion (SAO). The new SAO procedures will be announced by septel. Until the new procedures are announced, posts should file the DS-157 with the DS-156 and should employ current procedures in order to determine visa classification and eligibility.

2. While use of this new form is mandatory for applicants mentioned in the preceding paragraph, posts may, at their discretion, require any nonimmigrant visa applicant to submit a DS-157 in conjunction with the DS-156.

3. The DS-157 is now available on the A/RPS/DIR Intranet site (<http://10.4.64.84/>). This site is the official repository for all Department forms. The form will soon be available to the general public on the Department's Internet site (www.state.gov).

4. The General Services Administration will not stock the DS-157. However, posts may print the English version of the DS-157 locally, using the version on the A/RPS/DIR Intranet site as a camera copy, or they may order the English version from A/RPS/MMS/PRD. Posts are reminded that the DS-157 is subject to the Paperwork Reduction Act of 1995 (PRA), which is administered by the Office of Management and Budget (OMB). Pursuant to the PRA, OMB gives approval for agencies to use "information collections"

like the DS-157 for a maximum of three years at a time. Posts may not/not make any changes to the text of the DS-157, nor may they modify the layout.

5. Because of the need to be able to begin using this form quickly, the Department has secured emergency OMB approval for the DS-157. This emergency approval will expire on June 30, 2002. Accordingly, posts should not print more forms than they anticipate needing by this date. The Visa Office has begun the process of securing regular OMB approval to extend the validity of this form for three years beyond the emergency approval expiration. We will notify posts by septel when we receive regular OMB approval.

6. Translations: affected applicants must submit a DS-157 in the same language as that of the accompanying DS-156. Posts are responsible for translating the DS-157 locally. Translations must be accurate, and the layout of the translated DS-157 must look as much like that of the English version is possible. At the top of the form, "U.S. Department of State" should not be translated and should remain in English. No Department approval is required for translations.

7. Size: the DS-157 is designed for 8.5 X 11 or A4 paper, and the Department strongly encourages posts to use a full size version. However, if posts want to shrink the form to a smaller size, they may do so provided that the form remains legible. In no case may posts refuse to accept the full-size DS-157 from an applicant.

8. As with the DS-156, posts may request MRV funds to pay for expenses of printing and/or translating the DS-157.
POWELL

O 120129Z JAN 02
FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS IMMEDIATE
SPECIAL EMBASSY PROGRAM
POUCH
AMEMBASSY BELGRADE
POUCH DUSHANBE
POUCH LAHORE
POUCH PESHAWAR
UNCLAS STATE 007129

E.O. 12958: N/A
TAGS: CVIS, CMGT, AUSP
SUBJECT: CLARIFICATION ON THE USE OF THE DS-157

REF: STATE 6020

1. In reftel the Department announced the introduction of a new form, Supplemental Nonimmigrant Visa Application (DS-157) to be submitted by all male nonimmigrant visa applicants between the ages of 16 and 45, regardless of nationality and regardless of where they apply (including CA/VO/P/D and USUN).
2. Clarification: all A, G, and NATO applicants, except for A-3, G-5 and NATO-7 applicants, are exempt from this requirement. Male A-3, G-5 and NATO-7 applicants between the ages of 16 and 45, must/must submit a DS-157.
3. Further guidance will follow septel on crew list visas.
4. Minimize considered.
POWELL

Appendix 9: Title 5 of HR 3525 border security bill

TITLE V—FOREIGN STUDENTS AND EXCHANGE VISITORS

SEC. 501. FOREIGN STUDENT MONITORING PROGRAM.

(a) STRENGTHENING REQUIREMENTS FOR IMPLEMENTATION OF MONITORING PROGRAM.—

(1) MONITORING AND VERIFICATION OF INFORMATION.—Section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)) is amended by adding at the end the following:

“(3) ALIENS FOR WHOM A VISA IS REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall establish an electronic means to monitor and verify—

“(A) the issuance of documentation of acceptance of a foreign student by an approved institution of higher education or other approved educational institution, or of an exchange visitor program participant by a designated exchange visitor program;

“(B) the transmittal of the documentation referred to in subparagraph (A) to the Department of State for use by the Bureau of Consular Affairs;

“(C) the issuance of a visa to a foreign student or an exchange visitor program participant;

“(D) the admission into the United States of the foreign student or exchange visitor program participant;

“(E) the notification to an approved institution of higher education, other approved educational institution, or exchange visitor program sponsor that the foreign student or exchange visitor program participant has been admitted into the United States;

H. R. 3525—19

“(F) the registration and enrollment of that foreign student in such approved institution of higher education or other approved educational institution, or the participation of that exchange visitor in such designated exchange visitor program, as the case may be; and

“(G) any other relevant act by the foreign student or exchange visitor program participant, including a changing of school or designated exchange visitor program and any termination of studies or participation in a designated exchange visitor program.

“(4) REPORTING REQUIREMENTS.—Not later than 30 days after the deadline for registering for classes for an academic term of an approved institution of higher education or other approved educational institution for which documentation is issued for an alien as described in paragraph (3)(A), or the scheduled commencement of participation by an alien in a designated exchange visitor program, as the case may be, the institution or program, respectively, shall report to the Immigration and Naturalization Service any failure of the alien to enroll or to commence participation.”.

(2) ADDITIONAL REQUIREMENTS FOR DATA TO BE COLLECTED.—Section 641(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(c)(1)) is amended—

(A) by striking “and” at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph

(D) and inserting “; and”; and

(C) by adding at the end the following:

“(E) the date of entry and port of entry;

“(F) the date of the alien’s enrollment in an approved institution of higher education, other approved educational institution, or designated exchange visitor program in the United States;

“(G) the degree program, if applicable, and field of study; and

“(H) the date of the alien’s termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to re-enroll).”.

(3) REPORTING REQUIREMENTS.—Section 641(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(c)) is amended by adding at the end the following new paragraph:

“(5) REPORTING REQUIREMENTS.—The Attorney General shall prescribe by regulation reporting requirements by taking into account the curriculum calendar of the approved institution of higher education, other approved educational institution, or exchange visitor program.”.

(b) INFORMATION REQUIRED OF THE VISA APPLICANT.—Prior to the issuance of a visa under subparagraph (F), subparagraph (M), or, with respect to an alien seeking to attend an approved institution of higher education, subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), each alien applying for such visa shall provide to a consular officer the following information:

(1) The alien’s address in the country of origin.

H. R. 3525—20

(2) The names and addresses of the alien's spouse, children, parents, and siblings.

(3) The names of contacts of the alien in the alien's country of residence who could verify information about the alien.

(4) Previous work history, if any, including the names and addresses of employers.

(c) TRANSITIONAL PROGRAM.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act and until such time as the system described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act (as amended by subsection (a)) is fully implemented, the following requirements shall apply:

(A) RESTRICTIONS ON ISSUANCE OF VISAS.—A visa may not be issued to an alien under subparagraph (F), subparagraph (M), or, with respect to an alien seeking to attend an approved institution of higher education, subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), unless—

(i) the Department of State has received from an approved institution of higher education or other approved educational institution electronic evidence of documentation of the alien's acceptance at that institution; and

(ii) the consular officer has adequately reviewed the applicant's visa record.

(B) NOTIFICATION UPON VISA ISSUANCE.—Upon the issuance of a visa under section 101(a)(15) (F) or (M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F) or (M)) to an alien, the Secretary of State shall transmit to the Immigration and Naturalization Service a notification of the issuance of that visa.

(C) NOTIFICATION UPON ADMISSION OF ALIEN.—The Immigration and Naturalization Service shall notify the approved institution of higher education or other approved educational institution that an alien accepted for such institution or program has been admitted to the United States.

(D) NOTIFICATION OF FAILURE OF ENROLLMENT.—Not later than 30 days after the deadline for registering for classes for an academic term, the approved institution of higher education or other approved educational institution shall inform the Immigration and Naturalization Service through data-sharing arrangements of any failure of any alien described in subparagraph (C) to enroll or to commence participation.

(2) REQUIREMENT TO SUBMIT LIST OF APPROVED INSTITUTIONS.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall provide the Secretary of State with a list of all approved institutions of higher education and other approved educational institutions that are authorized to receive nonimmigrants under section 101(a)(15) (F) or (M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F) or (M)).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

H. R. 3525—21

SEC. 502. REVIEW OF INSTITUTIONS AND OTHER ENTITIES AUTHORIZED TO ENROLL OR SPONSOR CERTAIN NON-IMMIGRANTS.

(a) **PERIODIC REVIEW OF COMPLIANCE.**—Not later than two years after the date of enactment of this Act, and every two years thereafter, the Commissioner of Immigration and Naturalization, in consultation with the Secretary of Education, shall conduct a review of the institutions certified to receive nonimmigrants under section 101(a)(15) (F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F), (M), or (J)). Each review shall determine whether the institutions are in compliance with—

(1) recordkeeping and reporting requirements to receive nonimmigrants under section 101(a)(15) (F), (M), or (J) of that Act (8 U.S.C. 1101(a)(15)(F), (M), or (J)); and

(2) recordkeeping and reporting requirements under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372).

(b) **PERIODIC REVIEW OF SPONSORS OF EXCHANGE VISITORS.**—

(1) **REQUIREMENT FOR REVIEWS.**—Not later than two years after the date of enactment of this Act, and every two years thereafter, the Secretary of State shall conduct a review of the entities designated to sponsor exchange visitor program participants under section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)).

(2) **DETERMINATIONS.**—On the basis of reviews of entities under paragraph (1), the Secretary shall determine whether the entities are in compliance with—

(A) recordkeeping and reporting requirements to receive nonimmigrant exchange visitor program participants under section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)); and

(B) recordkeeping and reporting requirements under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372).

(c) **EFFECT OF MATERIAL FAILURE TO COMPLY.**—Material failure of an institution or other entity to comply with the recordkeeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants under section 101(a)(15) (F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F), (M), or (J)), or section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), shall result in the suspension for at least one year or termination, at the election of the Commissioner of Immigration and Naturalization, of the institution's approval to receive such students, or result in the suspension for at least one year or termination, at the election of the Secretary of State, of the other entity's designation to sponsor exchange visitor program participants, as the case may be.

Appendix 10: Corrections to exchange visitor regulations

Federal Register / Vol. 67, No. 70 / Thursday, April 11, 2002 / Rules and Regulations

17611

SUPPLEMENTARY INFORMATION: The Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277, 112 Stat. 2681 et seq., consolidated many of the functions of the former United States Information Agency into the Department of State. One of the functions consolidated was the administrative oversight of the Exchange Visitor Program. Created by the Mutual Educational and Cultural Exchange Act of 1961, as amended, the Exchange Visitor Program designates government and private sector entities to further the public diplomacy efforts of the Federal government by facilitating the entry of foreign nationals into the United States for the purpose of participation in individual exchange programs.

Pursuant to the Congressional restructuring of the foreign affairs functions, the Exchange Visitor Program regulations formerly set forth at 22 CFR part 514 were renumbered as 22 CFR part 62 when this function was absorbed into the Department. However, specific references to the former part 514 in subparts A, B, C, D and E were overlooked. References to organizational offices and positions were also not corrected.

The revisions set forth in this rule correct the inaccurate references to the former part 514 and substitute references to the new part 62. References to now non-existent organizational offices and positions are also deleted. Corresponding Department offices and positions are substituted.

The Department invites comments regarding this interim final rule. The Department will accept comments for 30 days following publication of this interim rule. A final rule will be adopted following Department review of all comments received.

Regulatory Analysis and Notices*Administrative Procedure Act*

The Department is publishing this rule as an interim rule, with a 30-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Given that the proposed changes are technical in nature, the Department finds it unnecessary to provide notice and comment prior to adoption of this rule.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and certifies that this rule is not expected to have a

DEPARTMENT OF STATE**22 CFR Part 62****[Public Notice 3940]****Exchange Visitor Program; Interim Final Rule****AGENCY:** Department of State.**ACTION:** Interim final rule with request for comment.

SUMMARY: The Department is revising portions of its existing Exchange Visitor Program regulations. These revisions will correct inaccurate references to related regulations and organizational offices and positions set forth in these regulations.

DATES: This rule is effective April 11, 2002. Written comments regarding this rule will be accepted until May 13, 2002.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: U.S. Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 852, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, U.S. Department of State, 301 Fourth Street, SW., Room 852, Washington, DC 20547; telephone (202) 619-6828; fax (202) 401-9809.

17612 Federal Register / Vol. 67, No. 70 / Thursday, April 11, 2002 / Rules and Regulations

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its

review process under section (6)(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs.

Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The Authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3

CFR, 1977 Comp. p. 200; E.O.12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. In subparts A, B and C, remove "514" and add in its place "62" in the following places:

- a. Section 62.2;
- b. Section 62.3(a)(3) and (b)(1);
- c. Section 62.4(a)(2);
- d. Section 62.5(a), (c)(2) and (c)(5);
- e. Section 62.6(a) and (b);
- f. Section 62.7(c);
- g. Section 62.9(g);
- h. Section 62.11(d);
- i. Section 62.13(a)(2) and (a)(7);
- j. Section 62.15(d) and (g);
- k. Section 62.20(a)(1), (a)(2), (d)(ii)(A) and (d)(ii)(C);
- l. Section 62.21(d), (e) and (g);
- m. Section 62.22(a), (c)(1) and (j);
- n. Section 62.23(d) and (e);
- o. Section 62.24(d) and (f);
- p. Section 62.25(b)(2), (e), (g) and (k);
- q. Section 62.26(a)(1), (a)(2), (a)(3), (e)(1), (e)(2) and (f);
- r. Section 62.27(b)(3);
- s. Section 62.28(b);
- t. Section 62.29(c);
- u. Section 62.30(c);
- v. Section 62.31(d), (f), (i), (m) and (n);
- w. Section 62.32(b);
- x. Section 62.40(a)(4); and
- y. Section 62.45(d)(3) and (d)(6) and (e)(2) and (f)(1).

3. In the table below, for each section indicated in the left column, remove the reference indicated in the middle column, and add in its place the reference indicated in the right column:

| Section | Remove | Add |
|---------------------|-----------------------------|--|
| 62.14(g) | § 514.14(a) above | paragraph (a) of this section. |
| 62.20(f) | § 514.20(g) | paragraph (g) of this section. |
| 62.20(g)(2)(ii) | § 514.20(g)(2)(i) above | paragraph (g)(2)(i) of this section. |
| 62.20(g)(2)(iii) | § 514.20(g)(1) | paragraph (g)(1) of this section. |
| 62.20(j)(1) | § 514.20(i) | paragraph (i) of this section. |
| 62.20(j)(2) | § 514.20(i) | paragraph (i) of this section. |
| 62.20(j)(3) | § 514.20(i) | paragraph (i) of this section. |
| 62.20(j)(4) | § 514.20(i) | paragraph (i) of this section. |
| 62.22(f)(1) | § 514.22(d) | paragraph (d) of this section. |
| 62.22(f)(3) | § 514.22(n) | paragraph (n) of this section. |
| 62.22(g) | § 514.22(d)(1)(iii) above | paragraph (d)(1)(iii) of this section. |
| 62.22(n)(2) | § 514.22(k), supra | paragraph (k) of this section. |
| 62.22(n)(2) | § 514.43, infra | 62.43. |
| 62.22(n)(3) | § 514.22(m) | paragraph (m) of this section. |
| 62.23(a) | § 514.23 | this section. |
| 62.23(e)(5) | § 514.23(f) | paragraph (f) of this section. |
| 62.23(f)(5)(ii)(A) | § 514.23(f) | paragraph (f) of this section. |
| 62.23(f)(5)(iii)(C) | § 514.23(f)(3) and (4) | paragraph (f)(3) and (4) of this section. |
| 62.23(h)(1)(i)(A) | § 514.23(e) | paragraph (e) of this section. |
| 62.23(h)(1)(ii) | § 514.23(f) | paragraph (f) of this section. |
| 62.23(h)(2)(ii) | § 514.23(f) | paragraph (f) of this section. |
| 62.24(a) | § 514.24 | this section. |
| 62.24(d)(1) | § 514.24(c) | paragraph (c) of this section. |
| 62.26(b) | § 514.26(a)(1) through (3) | paragraphs (a)(1) through (3) of this section. |
| 62.27(f) | § 514.27(b) and § 514.27(e) | paragraphs (b) and (e) of this section. |
| 62.28(a) | § 514.28 | this section. |
| 62.29(a) | § 514.29 | this section. |

4. In addition to the amendments set forth above, amend subparts A, B, and C as follows:

a. Remove "Form IAP-66" and add in its place "Form DS-2019" in the following places:

- i. Section 62.2;
- ii. Section 62.5(a);
- iii. Section 62.10(d) and (e)(1);
- iv. Section 62.11(d);
- v. Section 62.12(b), (c), (c)(4), (d)(2), (d)(3), (d)(4), (e)(2) and (e)(3);
- vi. Section 62.13(c)(1);
- vii. Section 62.15(e);
- viii. Section 62.20(d)(ii), (e), (f) and (h);
- ix. Section 62.21(f);
- x. Section 62.23(d), (f)(3)(ii), (f)(4)(iii), (h)(1)(i) and (h)(2)(i);
- xi. Section 62.24(e) and (g);
- xii. Section 62.25(m);
- xiii. Section 62.26(g) and (h);
- xiv. Section 62.27(c)(1), (c)(1)(i), (c)(1)(ii), (c)(2) and (d);
- xv. Section 62.28(e);
- xvi. Section 62.29(f) and (g);
- xvii. Section 62.30(i);
- xviii. Section 62.41(b) and (e);
- xix. Section 62.42(b)(2), (c) and (c)(1);
- xx. Section 62.43(b); and
- xxi. Section 62.45(a), (c)(1), (c)(2), (c)(3), (c)(4), (c)(4)(ii)(D), (d)(1), (e)(1), (h)(1)(ii), (h)(2)(ii), (i)(2)(i), (i)(2)(ii) and (k).

b. Remove "Forms IAP-66" and add in its place "Forms DS-2019" in the following places:

- i. Section 62.10(d);
- ii. Section 62.11(d);
- iii. Section 62.12 heading; introductory text, (a), (d)(1), (e)(1) and (e)(3);
- iv. Section 62.13(a)(7);
- v. Section 62.15(e)(1), (e)(2), (e)(3) and (e)(4);
- vi. Section 62.27(d); and
- vii. Section 62.45(c)(4)(i), (h)(1)(i) and (h)(2)(i).

c. Remove "form IAP-66" and add in its place "Form DS-2019" in the following place:

- i. Section 62.32(h)

d. Remove "Form IAP-37" and add in its place "Form DS-3036" in the following place:

- i. Section 62.5(a)

5. Subpart D is revised to read as follows:

Subpart D—Sanctions

§62.50 Sanctions.

(a) *Reason for sanctions.* The Department of State may, upon a determination by the Office of Exchange Coordination and Designation ("ECD"), Bureau of Educational and Cultural Affairs, impose sanctions against a sponsor which has:

(1) Willfully or negligently violated one or more provisions of this part;

(2) Evidenced a pattern of willful or negligent failure to comply with one or more provisions of this part;

(3) Committed an act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Committed an act or acts which may have the effect of bringing the Department of State or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this part, the Department of State, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions ("lesser sanctions") on a sponsor for any of the reasons set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's exchange visitor program designation, or other sanctions as set forth in this section;

(ii) A declaration placing the exchange visitor sponsor on probation, for a period of time determined by the Department of State in its discretion, signifying a pattern of serious willful or negligent violation of regulations such that further violations could lead to suspension or revocation;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) A limitation or reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity.

(2) Within ten (10) calendar days of service of the written notice to the sponsor imposing any of the sanctions set forth in this paragraph (b), the sponsor may submit to ECD any statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a conference. Upon its review and consideration of such submission, the Department of State may, in its discretion, modify, withdraw, or confirm such sanction. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. The decision of ECD is not appealable with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section, if:

(i) The proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of

authorized visitors in the sponsor's program during the previous calendar year; or

(ii) The proposed limitation in the size of the sponsor's program will not cause a significant financial burden for the sponsor.

(c) *Suspension or significant program limitation.* (1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at paragraph (a) of this section, ECD shall give written notice to the sponsor of the Department of State's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall not be sooner than thirty (30) calendar days after the date of the letter of notification.

(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to ECD, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) ECD shall review and consider the sponsor's submission and, within seven (7) calendar days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.

(4) The sponsor may within ten (10) calendar days after receipt of the aforesaid notice effecting the sanction, appeal the sanction to the Exchange Visitor Program Designation, Suspension and Revocation Board ("Board") by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee, shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(d) *Summary suspension.* (1) ECD may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission

17614 Federal Register / Vol. 67, No. 70 / Thursday, April 11, 2002 / Rules and Regulations

which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefore and the effective date thereof, notify the sponsor of the Department of State's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) calendar days.

(2) No later than three (3) calendar days after receipt of such notification, the sponsor may submit a rebuttal to ECD, setting forth therein any reasons why a suspension should not be imposed.

(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. Within three (3) calendar days of receipt of such submissions, ECD shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.

(4) The sponsor may, within ten (10) calendar days after receipt of the aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(e) *Revocation.* (1) The Principal Deputy Assistant Secretary, or his or her designee, may, for any reason set forth at paragraph (a) of this section, give the sponsor not less than thirty (30) calendar days notice in writing of its intent to revoke the sponsor's exchange visitor program designation, specifying therein the grounds for such revocation and the effective date of the revocation. Revocation need not be preceded by the imposition of a summary suspension, a suspension, or any lesser sanctions.

(2) Within ten (10) calendar days of receipt of the notice of intent to revoke

in paragraph (e)(1) of this section, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to the Principal Deputy Assistant Secretary any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) The Principal Deputy Assistant Secretary, or his or her designee, shall review and consider the sponsor's submission and, thereafter, notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.

(4) The sponsor may, within twenty (20) calendar days after receipt of the notice effecting the revocation in paragraph (e)(3) of this section, appeal the revocation to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary. The filing of the notice of appeal shall serve to stay the effective date of the revocation pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(f) *Responsible officers.* (1) The Department of State may direct a sponsor to summarily suspend, suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section.

(2) In the event that such action is directed, the sponsor shall be entitled to all of the rights of review or appeal that are accorded to a sponsor under paragraphs (b), (c), (d), and (e) of this section.

(g) *Denial of application for redesignation.* (1) ECD shall give an applicant for redesignation not less than thirty (30) calendar days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.

(2) Within ten (10) calendar days of receipt of the aforesaid notice of intent to deny the application in paragraph (g)(1) of this section, the applicant shall have an opportunity to demonstrate

why the application should be approved, and may submit to ECD any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.

(3) ECD shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the applicant of its right to appeal the denial and of its right to a formal hearing thereon.

(4) The applicant may, within twenty (20) calendar days after receipt of the notice of denial in paragraph (g)(3) of this section, appeal the denial to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary.

(5) Upon receipt of the notice of appeal the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(h) *The Exchange Visitor Program Designation, Suspension, and Revocation Board.* (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board ("Board") shall consist of:

(i) The Deputy Assistant Secretary for Academic Programs of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall also serve as presiding officer of the Board;

(ii) The Executive Director, Office of the Executive Director of the Bureau of Educational and Cultural Affairs, or his or her designee; and

(iii) The Director, Office of Policy and Evaluation of the Bureau of Educational and Cultural Affairs, or his or her designee.

(2) The Office of the Legal Adviser of the Department of State shall appoint an attorney from the Office of the Legal Adviser to present the case to the Board on behalf of the Department. Such attorney shall not take part in the deliberations of the Board.

(3) The Office of the Legal Adviser of the Department of State shall also appoint an attorney in the Office of the Legal Adviser to serve as a legal adviser to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.

(i) *General powers of the Board.* At any hearing before the Board pursuant to this Part, the Board may:

(1) Administer oaths and affirmations;

17616 **Federal Register** / Vol. 67, No. 70 / Thursday, April 11, 2002 / Rules and Regulations

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation;

(b) Notify exchange visitors who have not entered the United States that the program has been terminated unless a transfer to another designated program can be obtained; and

(c) Return all Certificate of Eligibility Forms in the sponsor's possession to the Department of State within thirty (30) calendar days of program termination or revocation.

Dated: March 1, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

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