



GENERAL INFORMATION REGARDING THE NONIMMIGRANT STUDENT (F-1 AND J-1) STATUS

If you are interested in studying in the United States, chances are you will need a visa to enter the United States in Nonimmigrant Student (F-1 or J-1) status. U.S. immigration law allows for the admission as non-immigrants those who are coming to the U.S. to participate in a full time course of study. Most students enter in F-1 status, although the J-1 visa (for exchange visitors participating in a program approved by the State Department) and M-1 visa (for vocational students) are also sometimes available. What follows is an overview of the process of obtaining an F-1 visa and maintaining that status.

General Requirements

As with all nonimmigrant classifications, the most important requirement to obtain an F-1 visa is the demonstration of nonimmigrant intent. The student must maintain a home abroad that s/he has no intention of abandoning. The student must be coming to the U.S. to pursue a full course of academic study, and must demonstrate that s/he possesses the financial resources to allow her/him to study without the need to engage in unauthorized employment. Most students are able to get approved for a stay equal to the duration of their studies in the U.S. and can study in any pre-approved institution. However, there are important exceptions.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 imposed a number of new restrictions on international students. Among these are the exclusion of international students from kindergarten through eighth grade at public schools and from publicly funded adult education programs. Also, international students in grades 9-12 at public schools must reimburse the school for the cost of the education. Failure to do this can result in a bar to admission. International students in public high schools are limited to 12 months of study.

Step 1: Find a School

A prospective student must first identify a school that is qualified to sponsor a student for a visa. A school that wishes to have international students enroll must first make an application with the US Citizenship and Immigration Service (USCIS). The new Student and Exchange Visitor Information System (SEVIS) imposed a number of changes in the process by which the USCIS ensures that a school is eligible to participate in the F-1 process. Schools must, of course, demonstrate that they are legitimate educational institutions and appoint a designated school official (DSO) who will sign all necessary forms.

Step 2: Get a Form I-20

For an international student to obtain F-1 status, s/he must first receive a Form I-20 issued by the school that provides information about the school and the student. Before the school can issue a Form I-20, the following conditions must be met:

1. The student must have made a written application to the school;
2. The school must have received the student's academic record and evidence of financial support;
3. The student must meet the school's qualifications for admission, including any English language proficiency; and
4. The student must have been accepted by the school

The student will receive a paper copy of the Form I-20, but under SEVIS schools no longer maintain their own paper copies. Instead, schools will input the required information into SEVIS, making it available to the USCIS without having to contact the school directly.

Step 3: Apply for a Visa at a U.S. Consulate

After the school issues the Form I-20, it sends the form to the student abroad, who then applies for a visa at her/his local U.S. consulate. To make the visa application, the student must present the Form I-20, her/his passport, the necessary visa fee (which varies from location to location), an Application for a Nonimmigrant Visa Form (OF-156), and evidence of financial support. Before the U.S. Department of State can issue a visa, the school must have entered the required information about the student into SEVIS, which the consulate is to access prior to issuing the visa. That the visa has been issued is also to be noted in SEVIS.

Unless there are unusual circumstances, the visa will generally be issued on the day the application is submitted, or only a few days afterward. A prospective student who has not yet decided on a school can request a visa to enter the U.S. in Visitor for Pleasure/Prospective Student (B-2) status. If the individual has such a visa, it is possible to apply for a change to Nonimmigrant Student (F-1) status in the U.S. they can seek F-1 status; however, the prospective student will not be allowed to begin classes until the USCIS approves the request for the change of status. Also, even if a prospective student makes his or her intention to enroll in a course of study clear at the time of entry, the USCIS may still deny an application for the change of status.

Step 4: Entering the U.S.

After receiving the visa, the student may make an application for admission at a U.S. port of entry. The student must present her/his passport, visa, evidence of support, and the Form I-20. The Customs and Border Patrol (USCBP) Inspector will note in SEVIS that a student has entered the U.S.

Step 5: Maintaining Status

In light of the bars on admission created in 1996, it is very important for the student to maintain their status while in the U.S.. There are eight important things that must be done to maintain status:

1. Keep a valid passport at all times, unless otherwise exempt from the passport requirement;
2. Attend the school authorized;
3. Participate in a full course of study;
4. Leave the U.S. by the completion date shown on the Form I-20, or request a program extension from the school's designated student officer;
5. If the student wants to change from one educational level to another (for example a bachelor's program to a master's) , s/he must apply to the designated student officer;
6. In most cases, work no more than 20 hours per week while school is in session;
7. Not work off campus without USCIS authorization; and
8. Report any change in residence to the USCIS within 10 days.

Of course, one of the most important concepts in F-1 status is a "full course of study." USCIS regulations give five possible definitions for the concept.

1. Postgraduate or postdoctoral study at a college, university, conservatory or religious seminary;
2. Undergraduate study at a college or university consisting of at least 12 credit hours per term, except in cases where to finish the program the student does not need to take 12 hours in the last term;
3. Study at a postsecondary institution that awards associate or comparable degrees, and whose credits are accepted by at least three other institutions of higher learning;
4. Study in a language, liberal arts, fine arts, or other nonvocational training program. This study must consist of 18 hours of attendance per week, 22 hours if laboratory work constitutes the dominant part of the course of study; and
5. Study in a high school, providing the international student attends the minimum class hours per week required for graduation.

Under the SEVIS program, an F-1 student will be allowed to reduce her/his course load because of academic difficulties only once and must resume a full course load at the start of the next full academic term. In the case of illness or another medical condition that prevents the student from pursuing a full course load, the student may receive permission to take a reduced course load for an aggregate total of 12 months, which will not include any reductions based on academic difficulties. Academic difficulties and illness are the only reasons a student will be authorized to take less than a full course load.

Changing Academic or Degree Programs

Transferring Schools

Students may transfer to a new school up to 60 days after completing a course of study at another institution. Because SEVIS allows a student's records to be available to only one school at a time, the student will be issued the new I-20 only when the date specified for their transfer occurs. After this date, the initial school will no longer have access to the student's SEVIS records, so the student must be sure of their desire for a transfer.

Changing Educational Programs

If a foreign student changes educational programs within the same institution, a similar process is required. The student should obtain a new I-20 and within 15 days of beginning the new program, submit it to the school's designated student officer. The officer should note on it that the student is changing from one program to another at the same institution, and submit it to the USCIS within 30 days of receiving it from the student. If the student had employment authorization, s/he will lose it due to a change in program.

Out of Status Students

If the student is out of status, either through failure to enroll for a full course of study during a term, unauthorized employment, or for any other reason, they must seek reinstatement with the USCIS. This request must be made within five months of falling out of status. Also the student must show that the need for reinstatement was the result of circumstances beyond their control. A request for reinstatement must include the following:

- Form I-539 Request to Change or Extend Nonimmigrant Status
- Form I-20 (school's copy)
- The student's I-94
- A supporting statement
- Filing fee for the I-539
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The support statement is the crucial element of this application. It must outline that the student's failure to maintain status was because of circumstances beyond his or her control, and that failure to reinstate the student would result in extreme hardship to the student. The letter must also specify that the student is now, or will, pursue a full course of study, has not been employed without authorization, and is not in removal proceedings. The reinstatement application is filed with the USCIS district office having jurisdiction over the school.

Employment Related Issues

As a general rule, foreign students are not authorized to work while in the US. There are, however, some exceptions to this rule.

On Campus Employment

Two types of on campus employment are allowed without explicit USCIS authorization:

- On campus employment that will not displace a US resident
- On campus employment as part of a scholarship, fellowship, post-doctoral appointment, etc.

For the first type, the issue will be whether a US worker will be displaced. Whether this is the case is left by and large to the school. The standard used is whether the job is one typically filled by students, such as library assistants. If this is the case, a US worker will not be displaced. The employer in this situation need not always be the school. For example, the foreign student can work for a commercial firm that contracts with the school to provide services, such as a bookstore or cafeteria. While school is in session the student cannot work more than 20 hours per week, although during vacations the student may work full time.

The second type of preauthorized employment, when it is part of a scholarship, etc., is considered part of the academic program. While the work must be “on campus,” USCIS regulations allow work at some off campus locations. There are two primary situations when this is the case. First, if the workplace is “educationally related” to the school, it is considered on campus. Second, a workplace that is “educationally affiliated” with the school is considered on campus. This covers situations in which the student is conducting research with a professor who has a research grant that does not come from the school. Again, the student cannot work more than 20 hours a week while school is in session, but can work full time during vacations.

Curricular Practical Training

The second type of student employment that does not require specific USCIS authorization is employment in conjunction with a work-study program (not the Federal financial aid kind) also called “curricular practical training”. Such programs require students to work as part of their academic training. Other types of employment covered by this rule include work for which the student receives academic credit, and work that is required for graduation, such as an internship, whether or not academic credit is earned. A student cannot engage in curricular practical training during her/his first academic year, although an exception can be made for graduate students required to work immediately. If a student receives more than one year of full time curricular practical training, they are not eligible for optional practical training. That a student is obtaining curricular practical training must be noted in SEVIS.

Off Campus Employment because of Economic Necessity

For a student to obtain permission to work off campus because of an unforeseen economic necessity, USCIS permission must be obtained. Also, the student must meet the following requirements:

- There is “a severe economic hardship caused by unforeseen circumstances beyond the student’s control.” Examples include loss of financial aid or on campus employment without fault on the part of the student, a severe devaluation in the currency of their home country, substantial increases in the cost of tuition or costs of living, medical bills, and an unexpected change in the condition of the student’s source of support.
- There must be no suitable and available on campus employment opportunity
- The student must have completed a full academic year of study
- The student must be in good academic standing
- The designated student officer must recommend work authorization
- The student must obtain employment authorization from the USCIS
- The student can work no more than 20 hours while school is in session

Optional Practical Training

Optional practical training is designed to give the foreign student an opportunity to further his/her education by applying what s/he has learned in a job. The job must be related to their field of study, and the student is authorized to work no more than 12 months. Optional practical training, often referred to as OPT, may be obtained during school or after graduation, but is still limited to 12 months. Therefore, any OPT time used before graduation will mean it is unavailable after graduation. It must be completed within 14 months of the student's completion of the academic program.

Pre-graduation OPT is available in the following circumstances:

- When school is not in session, as long as the student is eligible for the next academic semester and intends to register
- When school is in session, so long as the student works less than 20 hours a week

Post-graduation OPT is available in the following circumstances

- When the student has completed the course of study
- When the student has completed all classroom requirements for a degree, but has not completed a thesis (or its equivalent) necessary for the degree

Applying for Optional Practical Training

The student must apply to the designated student officer, who will evaluate the request and make a recommendation on it. This recommendation is to be based on two factors, whether the training sought is related to the student's field of study and whether it is appropriate for their educational level.

The application is sent to the USCIS Service Center. The Service Center will send the employment authorization card directly to the student.