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Immigration FOCUS

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Foreign Students Entering on B-2 Visas Must Declare Intent to Study Prior to US Entry

The INS has issued a final rule affecting students and visitors that went into effect on April 1, 2002. Since that date, foreign students seeking to enter the US on visitor visas must clearly indicate their intentions to study at the time of their visitor visa interview overseas. The State Department must annotate the visa with a statement to this effect. If the annotation is not on the visa, the student will not be able to change to student status in the US after entering as a visitor.

This rule also prohibits students from starting school until their change of status from B to F is approved. Under prior law, students could start their program as soon as the application for a change of status was submitted to the INS. The new law was a direct response to the INS' approval of student visa applications for several of the 9/11 hijackers months after the attacks.

Prior law recognized the inherent slowness in the INS adjudication process and allowed the start of classes so students and universities would not be inconvenienced.

To address the concerns over slow processing times, the rule also contains a provision stating that the INS will now adjudicate change of status applications within 30 days.

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Navigating the World of Immigration Law

Students, Universities and Visitors Facing New Challenges from INS

The INS has proposed several new regulations that will greatly impact foreign students, universities, and foreign visitors. The proposed regulations are the latest attempt by the INS to address the many shortcomings in the system, made painfully obvious by the 9/11 terrorist attacks. The regulations are aimed at improving the INS' ability to keep tabs on the activities and whereabouts of students and visitors, and quickly identify those who have violated their visas.

In spite of support for the goals of the regulations, there is vocal opposition from many groups. The university community questions the feasibility and privacy issues involved with an INS system that will require them to keep large amounts of information on each student and that will be accessible to the INS. Business and tourism concerns question the wisdom of an INS proposal to limit most foreign visitors to 30 day stays in the US.

Washington observers believe the student visa regulations will be issued in early Fall without major modifications. However, the outcome of the visitor visa regulations is much less certain, due to the major outcry of opposition when the regulation was first proposed. It is also possible that INS reorganization and preoccupation with the details of the Homeland Security proposal will push issuance of a final rule to the back burner.

Visitor Visas

Current regulations permit B-2 visa holders, those coming for tourism or pleasure, to be admitted to the United States for a 6 month period. The period of admission is stamped on the I-94 departure record at the time the visitor is inspected by an INS officer, usually at the airport after landing in the US. Few questions are asked of the visitor, unless they have spent significant time in the US in the near past or indicate that they will be doing something other than visiting in the US, such as working or going to school.

Extensions, usually for an additional 6 months, may be requested by B-2 visitors once they are in the US. Current regulations put few restrictions on when an extension may be requested. The primary line of inquiry is whether the visitor has a true intent to return to their home country. This can be demonstrated by submitting a return airline ticket or travel itinerary.

The proposed regulation reduces the 6 month period to 30 days. The only way a visitor could obtain a longer stay would be to clearly articulate a valid reason that could be accepted or rejected by the INS officer at the airport. Extensions would be limited to several circumstances, including an unexpected occurrence out of the visitor's control, and compelling humanitarian reasons. The new regulation would also reduce the total time allowable in B-2 status from one year to 6 months. ▶

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SEVIS

The INS will also be increasing its ability to monitor the activities of students after they begin their studies. To accomplish this goal, all schools authorized to issue student visas are required to participate in the Student and Exchange Visitor Information System (SEVIS). This is an online database, requiring schools to input and update information on each student. SEVIS requires schools to notify the INS when students fail to report for classes, drop below the minimum number of credits per semester, or otherwise violate their status.

The INS has unlimited access to the database, enabling it to monitor whether students are maintaining their status, and will be notified by schools when students

violate their status. The system will also be accessible to the Department of State when issuing student visas abroad. Consular officials will check SEVIS to verify the authenticity and contents of the documentation presented by student visa applicants. All schools must be registered and using SEVIS by January 1, 2003, and may begin using SEVIS on a voluntary basis now.

Reinstatements Restricted

Another change in current law is the elimination of flexibility in the reinstatement process. Prior law permitted students who had fallen out of status to obtain a reinstatement of their F-1 visa if they could show that they had a compelling reason for violating their status, and had not worked without authorization.

The new regulation would limit reinstatements to those requested within 5 months of the violation. Students requesting a reinstatement must show that the status violation relates to a reduction in course load that could have been approved, the denial of the reinstatement would cause extreme hardship, and that the need for reinstatement was caused by circumstances beyond the student's control. ■

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Being Prepared

While the proposed changes are reasonable in their scope and nature and will go far in addressing the INS' past inability to track visitors and students, they leave little recourse for those who unknowingly violate the terms of their visa. The consequences of these violations are high, including a 3 year bar to reentry to the United States, inability to change status in the US and deportation.

Visitors and students must be prepared in advance to address any INS concerns. Visitors will need to have a clear plan for their visit and documentation of why they need more than a 30 day stay in the US. Students need to have a clear understanding of the obligations of the visa and to keep in constant contact with the Foreign Student Advisor at their institution. Advance planning will also be required for both groups, in order to maintain status and provide enough time to file for extensions, transfers or changes of status. ■

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