

OUR PRACTICE

Students

Foreign nationals can engage in studies in the U.S. in about six classifications or situations, each with its different rules and issues:

- **B-2 visitors**
- **Other Nonimmigrants Incident to Status**
- **F-1 Academic and Foreign Language Students**
- **J-1 Exchange Visitors**
- **M-1 Vocational Students**
- **Undocumented Aliens**

We advise and assist clients in connection with all of these options in many ways.

B-2 Visitors

A B-2 tourist may engage in "a short course of study" incidental to the visit or in an "avocational or recreational" school. Someone may also use B-2 to travel to the U.S. in advance of proper F-1, J-1 or M-1 status (for more substantial schooling) because of some difficulty in arranging such status before departure to the U.S, but it is highly recommended to disclose this purpose on the visa application and request an annotation such as "intending student" on the visa and/or I-94 upon entry in order to be able to show that no misrepresentation was made. Otherwise, USCIS may look skeptically at an application to change to the student status after entry, unless the person can demonstrate that the decision to engage in studies arose after entry.

Other Nonimmigrants Incident to Status

Family members of "principal aliens" in most work authorizing classifications (i.e., E-1/E-2, H-4, L-2, TD) may attend even a full load of academic or other classes in the U.S. without any further authorization. Dependents of B-1 or B-2 visitors or of F-1 and M-2 students may attend only elementary, secondary, recreational or vocational schools without obtaining their own independent F-1, J-1 or M-1 status. The "principal alien" in any nonimmigrant classification other than B, C, D or Q (classifications with very limited purposes and duration) or F, J, or M (the student classifications themselves) may engage in studies "incident" to the activities essential to the classification. But none of these nonimmigrants in non-student classifications may engage in the kinds of on-campus or off-campus work arrangements that F, J and M status can allow, and sometimes a person in a dependent classification may wish to change to a student status in order to enjoy those opportunities.

F-1 Academic and Language Students

The most commonly used student classification is F-1, for academic and English language study.

The school itself must obtain USCIS approval to take F-1 students, applying for that authorization on Form I-17. Nearly any academic school, from a small private elementary school to a large public university, may participate, but there are some special exceptions discussed below. After the events of September 11, 2001, USCIS suspended approval of schools temporarily and engaged in an audit of schools already approved. Once

approved, the school appoints a "Designated School Official" (DSO) to oversee the school's compliance with the complex F-1 regulations. The Department of Homeland Security introduced the [SEVIS](#) system to track compliance and foreign students in the United States, and it tracks all persons in F, J or M status from the time the student receives documents from the school (I-20), through visa issuance, entry into the U.S., reporting for school, changes of address, school transfers, etc. until the students complete their school programs.

The school may issue Forms I-20 to foreign students whom it has accepted for enrollment and who appear to be eligible for F-1 status. Some schools more rigidly and diligently evaluate the candidates for F-1 eligibility than others, particularly concerning the ability to pay tuition and expenses without unauthorized work.

In the absence of more helpful and detailed guidance from USCIS than the regulations themselves, many DSOs join [NAFSA](#) for support and information. Large universities with staff designated to the foreign student advisor function are usually quite competent in administering F-1 programs and providing solid advice to students on the complexities of F-1 status. Students in smaller schools and universities whose DSOs have other significant responsibilities, or in schools where the DSO does not seem to be concerned with the range of student options, will more frequently seek an immigration lawyer to make sure all options are known and correct steps are taken.

Once the I-20 is issued by the school, the student submits the I-20 either with an F-1 [visa application](#) to a U.S. consulate or with an application to the USCIS to [change status](#) within the U.S. The primary issues are [nonimmigrant intent](#) and financial support. Financial support can include the student's own assets, or the assets and/or income of others abroad or even in the U.S. who express their commitment to support the student. If the support may come from friends and relatives in the U.S., the student must consider the possible impact of this fact on the government's analysis of nonimmigrant intent. Note that changing to F-1 from B visitor, in the absence of an annotation on the visa and I-94 card reflecting "intending student," can be problematic, and legal assistance is advised. It is not normally considered a violation of status for someone changing to F-1 status (from a status other than B visitor) to begin courses before USCIS approval, which is handy in light of the long time it often takes for approval to arrive.

When the student enters in, or is changed to, F-1 status, USCIS usually issues an I-94 card that uniquely does not have an actual date for departure. Instead, it says "D/S," for duration of status, which essentially means that the I-20 (including a subsequently issued I-20) will reflect the period of study allowed. Spouse and children receive their own I-20 form from the school, F-2 visas from the consulate, and an I-94 card from the immigration inspector with expiration of "D/S." The student may move on to another program at the same school, or transfer to a new school, through the issuance of new I-20s coordinated by both schools' DSOs, without any applications being made to USCIS (Although the schools send *notice* of the transfer to USCIS). Thus, someone could conceivably enter once in F-1 status and string a series of ever-advancing courses of study together for a lifetime of F-1 student status without ever making further application to USCIS. But if the student departs the U.S., he must have a valid F-1 visa, plus a currently valid I-20 endorsed for re-entry, in order to reenter the U.S.

In order to maintain valid status, the student must remain enrolled and maintain a "full load" of courses, which is normally 12 hours for a university student and 9 hours for a graduate student. A transcript of courses is the best evidence of compliance. For this reason, in these times of heavier scrutiny of students, it may be helpful for F-1 students, and their dependents when not traveling with the F-1 student, to carry copies of school transcripts reflecting that the F-1 student has continued the full course of studies. Any transfer of schools must be initiated by the respective schools in SEVIS before completion of studies at the first school. Once the studies are completed, even if the I-20 has not expired, the student has a 60 day "grace period" of lawful presence in which to depart or file papers to change to another status.

Sometimes things happen that prevent a student from completing a full course of study or maintaining I-20 forms properly, and three options arise. Under strictly limited rules, the DSO may agree to certify in SEVIS that the situation was compelled by academic or medical reasons, and nothing more need be done. The student may apply on Form I-539 for reinstatement of student status, demonstrating good excuses for the failure, if possible with a supporting letter from the DSO. Third, the student and dependents may depart the U.S. and re-enter with a new I-20 and any valid F visas, if possible, to cure the problem. Note that a denial of reinstatement automatically invalidates any existing F visa, requiring a new one from the alien's country of residence before F-1 re-entry.

F-1 students may work in some situations. The opportunities for F-1 work are described on [another page](#). Engaging in unauthorized employment is one of the most common types of failure to maintain status. F-2 dependents may not work for pay in any situation.

The law prohibits *any* use of F-1 status for attendance at a publicly funded elementary school or adult education program, although a community college charging aliens tuition is an exception. An F-1 student may only attend a public high school for one year, and even then she must in advance reimburse the school system for the cost of a year's education as determined by the system. If an F-1 student violates these limitations, her F-1 visa is automatically invalidated, and she becomes inadmissible for 5 years. Interestingly, this rule does not prohibit study in such institutions in any status except F-1. Thus, the children of an H-1B worker may attend all years of an elementary school without reimbursing the school system at all.

J-1 Exchange Visitors as Students

Two of the many types of J-1 exchange visitor programs that can be established by a program sponsor are for "college and university students" and for "secondary school students." This provides interested schools with an alternative option for having foreign students, and many schools have both F-1 and J-1 programs for different purposes. Most of the [general rules of J-1 programs](#) apply, including the complications of SEVIS, and those are not all repeated here.

There are important differences between J-1 and F-1 college student arrangements worth noting. Two differences heavily affect the student. Most importantly, funding for the J-1 program may come from the U.S. or the student's government, or the field of study may be on the student's country's "skills list" filed with the State Department, and in either case the student would become subject to the [2 year home residency rule](#). Second, the J-2 *dependents* who are of working age may attend any school full time in J-2 status and apply for unrestricted employment authorization in one-year increments through application to USCIS on [Form I-765](#)— a significant difference from F-2 dependents' partial limitations on study and their complete inability to work. From the school's vantage, the special requirements are that the "Responsible Officer" (equivalent to the DSO for an F-1 program) must be a U.S. citizen, and the program must at least attempt to arrange reciprocal arrangements with foreign schools. Other differences include use of Form IAP-66, rather than I-20, issued by the school; a requirement that special insurance be in place for the student and dependents; and a 30-day, rather than 60-day, grace period for departure after completion of studies.

The opportunities for [work authorization](#) of the J-1 college or university student are discussed on a separate page.

J-1 classification is available for secondary school students to study for up to one year in a U.S. public or private school while living with an American host family. Participation in J-1 secondary school programs is usually arranged by J-1 programs, which handle paperwork with the State Department and require relatively little paperwork from the participating school.

M-1 Students

M-1 schools may be "an established vocational or other recognized nonacademic institution (other than in a language training program)." They obtain authorization to issue prospective students Forms I-20MN through application to a local USCIS office on Form I-17. The procedures for M status are quite similar to F-1 above, including SEVIS, with some important exceptions. The M-1 student may stay initially only long enough to complete the course of study, with a maximum of one year. Any extension (in one year increments) or transfer of schools (only within the first six months, unless the school closes or something else out of the student's control occurs) must be approved by USCIS through the filing of Form I-538, I-20 ID copy, and I-94 cards for the family.

Undocumented Aliens

Interestingly, the Supreme Court has held that public schools at the elementary and secondary level may not refuse to allow minor undocumented aliens to attend. The ruling is not clear as to university level, but many state universities interpret the Court's decisions as requiring them also to allow undocumented aliens to study. But being allowed to study as an undocumented alien does not make one lawfully present, and many undocumented aliens find themselves having performed well in American schools but caught in a vortex of immigration illegality. Bills to ameliorate this phenomenon have been seriously introduced in Congress and nearly passed. (Note that "public school" in the U.S. means the opposite as in the U.K.).

How We Can Help

We assist institutions and employers to seek USCIS or State Department designations of students or exchange programs, to establish systems for compliance with complex government rules for such programs, to help students of exchange visitors know and comply with their rules and obtain work authorization and other benefits that may be available, and to work through the complex individualized problems that inevitably arise. We assist business, institutions, family and friends in clarifying arrangements for visitors' activities and financial support in order to obtain visas and entry.

We help individuals document and clarify their nonimmigrant intent, financial support, and planned activities in making visa applications, seeking entry, and applying for change of status. We are frequently called upon by foreign student advisors and students to craft applications for change to student status after entry as a visitor. We also frequently advise and assist in efforts to overcome violations or failure to maintain student status. We help students and exchange visitors and/or their family members to obtain and maintain work authorization where available. We provide advice about allowable activities and periods of stay, and we evaluate and pursue changes to other classifications and to permanent residence for those who wish to expand their range of activities and duration of stay.