

FOREIGN STUDENTS IN THE UNITED STATES

The Congressional Research Service (CRS) provided a detailed report to the Congress regarding the Policies and Legislation pertaining to Foreign Students in the United States. The relevant portions of this report, which contains important and useful information to our readers, is reproduced hereunder

Background

Since the Immigration Act of 1924, the United States have expressly permitted foreign students to study in U.S. institutions. Most foreign students are at least 18 years old and enrolled in higher education programs. Foreign students are generally considered to enrich cultural diversity of the educational experience for U.S. residents as well as enhance the reputation of the U.S. universities as world-class institutions. Concerns have arisen in recent years that have caused Congress to take a new look at the Immigration and Nationality Act (INA) provisions that govern their admission. The September 11, 2001 terrorist attacks conducted by foreign nationals – including several terrorists on foreign student visas – raised a series of questions about foreign students in the United States, their rights and privileges, the extent to which the U.S. government monitors their presence in this country, and whether U.S. policy hampers the ability of domestic higher education institutions to attract foreign students.

Foreign Student Visas

There are three main avenues for students from other countries to temporarily come to the United States to study, and each involves admission as a nonimmigrant. A nonimmigrant is an alien legally in the United States for a *specific purpose* and a *temporary period* of time.

The three visa categories used by foreign students are *F visas* for academic study; *M visas* for vocational study; and *J visas* for cultural exchange.

F Visa

The most common visa for foreign students is the F-1 visa. It is tailored for international students pursuing a full-time academic education. The F-1 student is generally admitted as a nonimmigrant for the period of the program of study, referred to as duration of status. The law requires that the student have a foreign residence that they have no intention of abandoning. Their spouses and children may accompany them as F-2 nonimmigrants.

To obtain an F-1 visa, prospective students also must demonstrate that they have met several criteria:

- They must be accepted by a school that has been approved by the Attorney General.
- They must document that they sufficient funds or have made other arrangement to cover all their expenses for 12 months.
- They must demonstrate that they have the scholastic preparation to pursue a full course of study for the academic level to which they wish to be admitted and must

have a sufficient knowledge of English (or have made arrangements with the school for special tutoring, or study in a language the students knows).

Once in the United States on an F visa, nonimmigrants are generally barred from off-campus employment. Exceptions are for extreme financial hardships that arises after arriving in the United States and for employment with an international organization. F students are permitted to engage in on-campus employment if the employment does not displace a U.S. resident. In addition, F students are permitted to work in practical training that relates to their degree program, such as paid research and teaching assistantships. An alien on an F visa who otherwise accepts employment violates the terms of the visa and is subject to removal and other penalties discussed later in this article.

J Visa

Foreign students are just one of many types of aliens who may enter the United States on a J-1 visa, sometimes referred to as the Fulbright program. Others admitted under this cultural exchange visa include scholars, professors, teachers, trainees, specialists, foreign medical graduates, international visitors, au pairs, and participants in student travel /work programs. Those seeking admission as a J-1 nonimmigrant must be participating in a cultural exchange program that the U.S. Department of State's Bureau of Education and Cultural Affairs (BECA) has designated. They are admitted for the period of the program. Their spouses and children may accompany them as J-2 nonimmigrants.

Responsible officers of the sponsoring organizations must be U.S. citizens. The programs that wish to sponsor J visas also must satisfy the following criteria:

- be a bona fide educational and cultural exchange program, with clearly defined purposes and objectives;
- have at least five exchange visitors annually;
- provide cross-cultural activities;
- be reciprocal whenever possible;
- if not sponsored by the government, have a minimum stay for participants of at least three weeks (except for those designated as "short term" scholars);
- provide information verifying the sponsoring program's legal status, citizenship, accreditation, and licensing;
- show that they are financially stable, able to meet the financial commitments of the program, and have funds for the J nonimmigrant's return airfare;
- ensure that the program is not to fill staff vacancies or adversely affect U.S. workers;
- assure that participants have accident insurance, including insurance for medical evacuations; and
- provide full details of the selection process, placement, evaluation, and supervision of participants.

As with F visas, those seeking J visas must have a foreign residence they have no intention of abandoning. However, many of those with J visas have an additional foreign residency requirement in that they must return abroad for two years if they wish to adjust to any other nonimmigrant status or to become a legal permanent resident in the United

States. This foreign residency requirement applies to J nonimmigrants who meet any of three following conditions:

- An agency of the U.S. government or their home government financed in whole or in part – directly or indirectly – their participation in the program.
- The BECA designates their home country as clearly requiring the services or skills in the field they are pursuing.
- They are coming to the United States to receive graduate medical training.

There are very few exceptions to the foreign residency requirement for J visa holders who meet any of these criteria – even J visa holders who marry U.S. citizens are required to return home for two years. Although many aliens with J-1 visas are permitted to work in the programs in which they are participating, the work restrictions for foreign students with J-1 visa are similar to those for the F visa.

M Visa

Foreign students who wish to pursue a non-academic (e.g., vocational) course of study apply for an M visa. This visa is the least used of the foreign student visas. Much as the F students, those seeking an M visa must show that they have been accepted by an approved school, have the financial means to pay for tuition and expenses and otherwise support themselves for one year, and have the scholastic preparation and language skills appropriate for the course of study. Their spouses and children may accompany them as M-2 nonimmigrants. As with all of the student visa categories, they must have a foreign residence they have no intention of abandoning. Those with M visas are also barred from working in the United States, including in on-campus employment.

Duration of Status Visa

Although most nonimmigrants are admitted with visas that have a precise expiration date, foreign postsecondary students are admitted for “duration of status,” which lasts as long as they are full-time students or participating according to the terms of their exchange programs.

Agency Involvement

Nonimmigrant foreign students are processed by four different federal agencies during their tenure as applicants to and foreign students at United States higher education institutions. The first U.S. agency involved is the Department of State (DOS), which conducts the applicant interviews and either grants or rejects the visa applications. Once a nonimmigrant arrives at a United States port of entry, the individual receives an inspection by the Customs and Border Protection (CBP). The student’s arrival is reported to the Immigration and Custom Enforcement (ICE) for entry in to the Student and Exchange Visitor Information System (SEVIS). After entry, the alien’s academic institution is responsible for reporting information to the SEVIS database. The SEVIS information is then shared with DOS, CBP, and the U.S. Citizenship and Immigration Services (USCIS). The USCIS is responsible for adjudicating any adjustments in visa status the foreign students wishes to make.

Screening Procedures

Potential foreign students, as well as all aliens, must satisfy DOS's consular officers abroad and DHS inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the INA. These criteria include security and terrorist concerns as well as health-related grounds and criminal history. Some provisions may be waived/overcome in the cases of nonimmigrants, refugees, and certain other aliens. To become a nonimmigrant, aliens also must demonstrate that they are not "intending immigrants" (i.e., wanting to reside permanently in the United States).

In terms of criminal, security and terrorist concerns, the consular officers who process visa applicants are required to check the consolidated Terrorist Screening Database (TSDB) before issuing any visa; thus, the names of foreign students are run through various databases, as are those of all other nonimmigrants seeking a visa to enter the United States.

Student and Exchange Visitor Information System (SEVIS)

When Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, it added statutory language mandating that the Attorney General (now Secretary of Homeland Security), in consultation with the Secretaries of State and Education, develop by January 1, 1998, a program to collect data on F, J, and M nonimmigrants from at least 5 countries. By 2003, the data collection requirement included all countries. This provision of IIRIRA, requires that DHS collect the following data elements:

- identity and address of the alien;
- nonimmigrant classification of the alien, date of visa issuance, and any change or extension;
- academic status of the alien (e.g., full-time enrollment); and
- any disciplinary action taken by the school, college, or university as a result of a crime committed by the alien.

DHS is to collect the information electronically "where practical" According to the provisions of IIRIRA, educational institutions are required to report this information to DHS as a condition of continued approval to enroll foreign students.

Prior to September 11, 2001, some university officials argued they would be turned into an enforcement agent of the former-INS and expressed concern that the confidentiality of their student records would be compromised. Although educational institutions stopped their calls to repeal this provision of IIRIRA after the terrorist attacks and now support a tracking system, many educational institutions across the country expressed frustration about these new reporting requirements. They argued that the SEVIS is burdensome and that DHS is not providing training to staff who must use SEVIS. Despite these complaints, ICE has subsequently indicated SEVIS is operational for all incoming students. All continuing foreign students were required to be entered into SEVIS as of August 2003.

Following the full implementation of SEVIS in 2003, legislative activity on foreign student security has remained relatively calm. High profile incidents have positively contributed to the SEVIS image with the general public. Notably, the SEVIS security measures resulted in the detection of several instances of unaccounted alien students, including some as recent as the summer of 2006. In this high profile incident, 11 Egyptian student visa holders were admitted to the U.S. ports of entry, but never reported to classes or to the appropriate SEVIS officials at Montana State University. University officials reported the absence to DHS, which was able to locate and apprehend six of the 11 students and continue to search for the other missing students. Incidents such as this one are generally accepted as indicators that SEVIS is working as intended.

Trends and Characteristics

Foreign students have been coming to study in the United States for almost a century, and the numbers admitted have more than doubled over the past two decades. The largest sending regions of the world are Asia and Europe.

CURRENT ISSUES

After dedicating the past five years to improving security and tracking measures for foreign students, universities are now gearing their efforts toward attracting foreign students in high-demand fields of study.

Foreign Students & Funding

A newly emerging foreign student focus is the targeting of students intending to specialize in the areas of science, technology, engineering and mathematics (STEM). This focus is the part of a broader movement within higher education that emphasizes STEM-related skill development. Foreign students in this field of study represent a particularly attractive demographic for most universities since they provide skilled assistants and other forms of research labor during their time of study. Furthermore, undergraduate foreign students pay full tuition and are therefore an important source of revenues for many universities. This is highly relevant in discussions of STEM students, because foreign students constitute a significant portion of the overall STEM student population.

An ongoing point of contention for both STEM and non-STEM alike has been the availability of fellowships and teaching assistantship funding for foreign graduate students. Although these graduate students are eligible for direct aid from the government, most receive work-supported aid from the universities, where the funds stem from federally funded research grants to the university. This arrangement has been an ongoing source of controversy.

Foreign Students and Language Competence

Complaints have been levied against the support of foreign graduate students due to the lack of English competence. Foreign students are required to take the Test of English as a Foreign Language (TOEFL) in order to demonstrate that they could effectively study and provide instruction in English. In Asian countries, such as China, numerous cases of identity fraud have occurred at the test taking centers. Students with lower levels of

English competence have on numerous occasions paid others to conduct the test in their place while falsely presenting themselves as the student seeking admission to a U.S. institution. Universities have often had difficulty determining whether TOEFL scores are fraudulent until the student actually arrives in the United States. At this time, written offers of support have already been extended to the student and accepted. Although English-language competency persists as a problem for many programs, some university programs have reacted by not admitting any graduate students from countries with a history of fraudulent TOEFL scores, or requiring additional in-person interviews and making admission conditional upon successfully completing such interviews.

New Pathways to Permanent Residence

Many employers in STEM-related fields find the hiring of U.S. trained alien graduates to be an enticing prospect because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates. For those students on F-category nonimmigrant visas, a relationship with an employer can be built through the use of the optional training period. For up to 12 months after graduation, an F-visa student can serve as an intern for a United States firm without having to adjust his or her visa. Some firms find this option appealing because it can help bring in needed skills without being restricted to numerical limits or the same strict criteria as the H-1B visa for nonimmigrant professional workers.

For students who pursue optional practical training with a U.S. employer, the training period becomes a valuable opportunity to develop a relationship with an employer that could eventually result in an employment-based petition for permanent residence. Any individual wishing to come to the United States as an employment-based legal permanent resident (LPR) must have the employer submit a petition on his/her behalf. Because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates, some employers have push for the lengthening of the optional practical training period, as well as the creation of direct pathways to LPR status for foreign students in U.S. higher education institutions.