Memorandum to Presidents

APR 25 1979

Date: April 24, 1979

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Immigration and Naturalization Service Revised Regulations: Admission and Employment Of Nonimmigrant Students

The Immigration and Naturalization Service has recently amended its regulations which govern admission and employment of nonimmigrant students. A copy of these revised regulations is attached (Part 214, Title 8, Code of Federal Regulations).

The most significant change is that all new and renewal student applicants may qualify for nonimmigrant status which will extend for the duration of their status as students. Formerly, application had to be made on a yearly basis. A student must establish that the anticipated schooling will require more than one year, that the student intends to or is currently pursuing a full-time course of study and that the student's passport is current.

A nonimmigrant student may work while in this country only by presenting the following information to the Immigration and Naturalization Service:

1) the student is in good standing and pursuing a full course of study;

2) the student is in economic need due to circumstances unforeseen at the time of entry into this country;

3) employment will not exceed 20 hours a week while school is in session and will not interfere with course work; and

4) forms I-538 and I-94 are submitted to the Immigration and Naturalization Service.

In connection with the regulations the Service has instituted a new procedure for reviewing student applicants. Each student must be interviewed by an immigration officer to assure, among other things, that the student is not engaged in any activity deemed inconsistent with his continued presence in the United States as a student. The Service has advised that this conference may be avoided if the designated campus official interviews the student and certifies the above conclusion.
The Service has not defined the types of activities which it believes are inimical to student status, nor has it explained what appears to be an imposition of additional duties upon colleges with nonimmigrant student populations. Several associations representing higher education have written to the Commissioner of Immigration and Naturalization to outline these concerns. We will keep you informed as clarification is received. Please call the Office of University Counsel or Office of International Programs if you have any questions.

Sanford H. Levine

Attachment

This memorandum addressed to:

Presidents, State-operated Campuses

Copies for information only sent to:

Presidents, Community Colleges
Deans, Statutory Colleges
Acting President Odle
Vice President Cook
CHAPTER 1—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 214—NONIMMIGRANT CLASSES

Admission of Nonimmigrant Students for Duration of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking order amends the regulations of the Immigration and Naturalization Service to permit nonimmigrant students to be admitted for the duration of their status as students, to set forth criteria under which students may accept employment, and to provide that where students are granted permission to work under this regulation they may work full time when school is not in session, including the summer, when they are registered or are eligible and intend to register for the next succeeding school term. These amendments will eliminate the need for nonimmigrant students to apply each year for extensions of stay and summer employment, and will eliminate the need for the Service to adjudicate the large numbers of applications now required under existing regulations.

The regulation also establishes a group within the Central Office which will be responsible for coordinating activities of Service field offices and personnel in insuring compliance with and enforcement of Service laws and regulations relating to students.

These amendments are needed to facilitate the admission of nonimmigrant students and are intended to reduce the Service adjudications workload, while providing adequate immigration controls on persons here on student “F-1” visas.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:


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

(1) Students.

(2) Admission. A nonimmigrant who has a classification under section 101(a)(15)(F)(1) of the Act shall not be eligible for admission unless he/she establishes that he/she is destined to and intends to attend the school specified in his/her visa. In all cases, the name of the school a student is authorized to attend shall be endorsed by the examining immigration officer on the student’s form I-94. The period of admission of a nonimmigrant student shall be for the duration of status in the United States as a student if the information on his/her form I-20 indicates that he/she will remain in the United States as a student for more than one year, and if he/she agrees to keep his/her passport valid at all times for at least 6 months. (This requirement does not apply to aliens who are by regulation exempt from presentation of a passport.) If the information on form I-20 indicates that the student will remain in the United States for 1 year or less, he/she shall be admitted for the time necessary to complete his/her period of study. A nonimmigrant student presently in the United States shall upon his/her next application for extension of status be granted duration of status if it is indicated that he/she requires more than 1 year to complete his/her studies.

(3) Temporary absence. Form I-20 presented by a student returning from a temporary absence may be retained by him/her and used for any number of reentries within 1 year of the date of its issuance. A nonimmigrant who has a classification under section 101(a)(15)(F)(1) of the Act is not permitted to engage in off-campus employment in the United States, either for an employer or independently, unless all of the following conditions are met: (i) The student is in good standing as a student who is carrying a full course of studies as defined in subparagraph (la) of this paragraph, and (ii) the student is not otherwise employed. The student's status as a student who is carrying a full course of studies will not interfere with his/her school work or be subject to suspension or other adverse action by his/her school. The student may be granted duration of status under section 101(a)(15)(F)(1) of the Act.

(4) Employment. A nonimmigrant who has a classification under section 101(a)(15)(F)(1) of the Act is not permitted to engage in off-campus employment in the United States, either for an employer or independently, unless all of the following conditions are met: (i) The student is in good standing as a student who is carrying a full course of studies as defined in subparagraph (la) of this paragraph, (ii) the student has demonstrated that acceptance of employment will not interfere with his/her studies, and (iii) the student has submitted to an authorized official of a school approved by the Attorney General a form I-538, and this form has been certified by the official that all the aforementioned requirements have been met. The authorized official of the school will submit the certified form I-538...
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containing his recommendation together with the student's form I-94 to the Service office which has jurisdiction over the place where the school is located. The student has permission to accept employment when he/she receives form I-94 endorsed by the Service to that effect. Permission granted under this paragraph allows a student to work full time when the school is not in session, including the summer if the student is eligible and intends to register for the next following term. 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, if related thereto. A student who is offered this kind of on-campus employment, or any other on-campus employment which will not displace a United States resident, does not require Service permission to be engaged in such employment. Permission which is granted to a student to engage in any employment shall not exceed the date of expiration of the authorized stay and is automatically suspended while a strike or other labor dispute involving a work stoppage or layoff of employees is in progress at the place and at the time where the student is employed.

(6a) Practical training. If a student requests permission to accept or continue employment in order to obtain practical training, permission may be granted in increments of not more than 6 months for a maximum of not more than 12 months in the aggregate. However, when the course of study was of less than 12 months' duration, the alien graduate of a college, university, or seminary as defined by subparagraph (1a) of this paragraph, may be granted permission to engage in employment for practical training for an aggregate number of months not exceeding the length of that course of study, unless the district director and the recommending school agree that the maximum 12 months is warranted. After completion of a course or courses of study at a school which devotes itself exclusively or primarily to vocational, business, or language instruction, an alien graduate of such school may be granted permission to engage in employment for practical training for a period or periods of time equal to 3 months for each 12 months during which such an alien carried a full course of study at such school in the United States. Permission to accept employment for practical training may not be granted if the training applied for cannot be completed within the maximum period of time for which the applicant is eligible. In such case, the alien graduate may apply for change to another nonimmigrant classification that would permit his/her accepting employment. If application is granted for permission to engage in employment to obtain practical training, the initial authorized period shall be deemed to commence either on the date the student enters upon his/her duties while employed and the name and address of the employer. A student who has been granted permission to accept employment for practical training and who temporarily departs from the United States, may be readmitted for the remainder of the authorized period if he/she presents form I-20 endorsed by the school to indicate the date to which such training was authorized by the district director.

2. In §214.3 existing paragraph (1) is redesignated as paragraph (j) and re-published without change. A new paragraph (l) is added to read as follows:

§214.3 Petitions for approval of schools.

(l) Enforcement of student regulations by Immigration and Naturalization Service. There shall be established in the Central Office a coordinating group of employees to coordinate enforcement of the student regulations throughout the country. This group shall coordinate liaison between Service officers in the field and the schools. Officers in the field shall be responsible for conducting periodic reviews on the campuses under their jurisdiction for the purpose of determining whether students are complying with Service regulations including keeping their passports valid for a period of 6 months at all times where required and that work permission which has been authorized on the ground of economic necessity should continue to be authorized. Any apparent violations of the provisions of these regulations found by the Service officers shall be referred to the district director for appropriate action.

(1) Advertising. In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

(See. 123, and 214. (U.S.C. 1103, 1104.)

Effective date: The amendments contained in this order will become effective on January 1, 1978.


LEONEL J. CASTILLO.
Commissioner of Immigration and Naturalization.

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