



NALP LL.M. Section Program

Immigration Update 2009

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What We'll Cover Today

- ☐ Basic information on work visas for those new to the field
- ☐ Immigration issues that may affect our students, attorneys or law firms
- ☐ "Hot Topics" in immigration law and innovative approaches to obtaining work authorization for your attorneys
- ☐ Opportunity for Q&A with the panel
- ☐ Resources and links for immigration information

There are many kinds of status for activity in the US

- ☐ Some statuses allow for both a primary purpose (such as employment) as well as a possible intention to immigrate to the US
 - Such as the H-1B Employer Sponsored Status
- ☐ Some statuses only allow for the primary purpose (such as employment or study) and are recognized as non-immigrant status with non-immigrant intentions
 - Individuals with a non-immigrant status are entering the US with the understanding that they will leave the US at some point in the future. By entering under a non-immigrant status they have declared that they do not intend to immigrate to the US.

Primary Activity / Incidental Activity

- ☐ Each status authorizes a particular primary activity of the individual while in the US.
- ☐ Some activities incidental to the primary activity may be allowed. Some incidental activities are not allowed.
 - Example: Noncitizens in G-4 status are allowed to work in the US for a specific international organization, such as the World Bank. As stated in the Code of Federal Regulations (CFR), an individual who enters in G-4 status for work with the World Bank cannot work for any other entity or organization in the US [even for no pay]. Study in G-4 status IS allowed, however. Study is incidental to the primary activity of working for the world bank.

- ☐ Please see handout with listing of types of status one can hold while in the US.

F1 Student Status & J1 Student Status

- ☐ Under the J1 student status and the F1 student status “learning in one’s field of study” is the primary activity while in the US. “Learning in one’s field of study” continues as a primary activity after graduation through actual practical experience.
- ☐ F1 status and J1 status continue after graduation – for what is called
 - F1 Optional Practical Training (OPT period)
 - J1 Academic Training (AT period).
 - OPT and AT provide work authorization in the student and graduates field of study.
- ☐ Note:
 - F1 student - usually sponsored by self, family member or non-familial individual. They also have scholarships from organizations or sponsorship by firms and companies.
 - J1 student - primarily sponsored by an institution, foundation, or government

SEVIS DATABASE - Why is it important?
J-1 and F-1 status holders

- ❑ Following the events of September 11, 2001 Congress passed legislation that accelerated the mandatory implementation of an online *Student and Exchange Visitor Information System* database (SEVIS).
- ❑ The records in the SEVIS database are electronically updated by university staff and sponsoring organization (e.g., Fulbright Foundation) staff. Note: *Even after the individual graduates and for as long as the individual holds F-1 or J-1 student status.*
- ❑ Travel documents for entry into the US and documents needed for the US Embassy interview are printed from the SEVIS online system by designated university staff and sponsor staff.

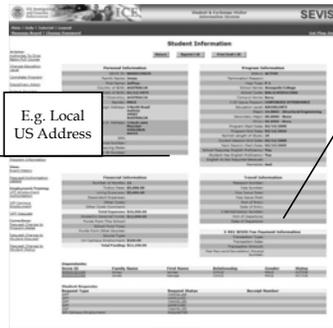
To maintain F-1 or J-1 status the status holder must communicate with his or her University or Sponsoring Organization so that the foreign student's SEVIS record can be updated. In some cases communication is required for up to 2 years after graduation during the OPT and AT period.

- ❑ Not maintaining one's status can lead to:
 - Loss of authorization to study in the US
 - Loss of authorization to stay in the US
 - Loss of authorization to work in the US
 - Future problems– obtaining a new visa, difficulty changing status, future difficulty obtaining work authorization under another status, difficulty entering the US, etc.
 - Worst case - potential for arrest, detention, and deportation.

As long as the individual holds F-1 status or J-1 status the university or sponsor (such as J-1 Fulbright) must electronically maintain the student's SEVIS record with information including:

- ❑ Foreign address
- ❑ US address
- ❑ US Employer name and address
- ❑ Termination of employment
- ❑ Change of status
- ❑ Etc.

Universities and exchange visitor organizations are required to electronically keep the SEVIS records up to date to maintain authorization to enroll foreign students.



SEVIS ONLINE DATABASE - RECORDS

The online records in this database can be viewed by:

- ☐ US Embassy Officials
- ☐ US Immigration Airport Officials
- ☐ US Citizenship Immigration and Service
 - (USCIS - approves work authorization in the US)
- ☐ and the Department of Homeland Security

DEFINITION OF EMPLOYMENT

- ☐ The definition of employment may seem obvious, but actually it is nuanced.
- ☐ What may appear to be volunteering could actually be employment (for which the foreign student needs appropriate work authorization).

Appropriate work authorization is needed if the F-1 or J-1 student is "employed"

- Employment is service for compensation (\$, good will, use of an apartment, stipend, bonus promised in the future...)
- Employment is ALSO service in a role that is normally paid. So working for no compensation (working for free) may also be considered employment when others performing the same role are **normally** compensated.
- Volunteering in the US is narrowly defined
 - If those in the same role are NOT normally compensated, then the position is a volunteer position.
 - E.g. , One cannot "volunteer" in a law firm without US government work authorization. Those working in law firms are normally compensated, therefore service to a law firm is considered employment - even if the individual is not paid.

Considerations other than immigration regulations

- Different federal and state government agencies regulate employment. It is important to consider all applicable regulations, including the Fair Labor Standards Act. Although employment may be authorized under one regulation, it may not be authorized under another.
- For more information on the Fair Labor Standards Act see: <http://www.dol.gov/esa/whd/flsa>

Quick comment on J-1 student status & employment

- Authorized through an internal university process
 - (an application to a US government agency is not required)
 - Employment pursuant to the terms of a **scholarship, fellowship, or assistantship, or on the university premises**
 - On campus employment is limited to 20 hours a week except for official school breaks and the student's annual vacation, when it may be full-time.
 - On-campus employment must be authorized in advance by the school official managing the SEVIS record.
- Off Campus Employment - J-1 student status - ACADEMIC TRAINING (AT)
- Academic Training is work authorization for off-campus employment of J-1 student status holders.
 - A job offer is required. This differs from F-1 off-campus work authorization, which does not require a job offer.
 - Each sponsoring organization has different internal rules for academic eligibility. For example, depending on the country of origin, a Fulbright student holding J-1 student status may or may not be eligible to work in the US (even for no pay).
 - The work experience cannot start more than 30 days after completion of studies.
 - Some institutions require that a job offer be available at least 30 days before a program ends.
 - The experience must directly related to the field of study.
 - There is an **18-month general limit to academic training**. A student can engage in up to 18 months or for a period of time equal to the academic program length, whichever is less.
 - AT can be used before graduation or after graduation.
 - A written determination from an academic dean or advisor is required and the student must receive written approval in advance from the staff person managing the SEVIS record.

Elements of the Academic Advisor's letter in support of J-1 Academic Training (AT) work authorization

- ❑ (A) The goals and objectives of the specific academic training program;
- ❑ (B) A description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;
- ❑ (C) How the academic training relates to the student's major field of study; and
- ❑ (D) Why it is an integral or critical part of the academic program of the student.

Employment Options for F-1 Student Status Holders

- ❑ Internships for academic credit and no pay are not considered employment.
- ❑ **On - campus employment:** F-1 student status holders are eligible to work "on- campus" in any position.
 - Regulations allow up to 20 hours/week of on-campus employment and full-time during breaks.
- ❑ **(CPT) Curricular Practical Training (CPT) Eligible after one academic year in F1 status - with internal university authorization from the foreign student advisor managing the SEVIS record.**
 - The position must be pre-graduation, an integral part of the student's curriculum, and only for those receiving academic credit. [Note: Georgetown University requires that the course be listed in the regular bulletin of course offerings, have a faculty member assigned to teach the course, as well as be instrumental to achieving the curricular academic objective.]
 - **NOTE: The Georgetown Law Center does not grant CPT authorization to any student.**
- ❑ **(OPT) Optional Practical Training -** Off-campus employment ONLY in the field of study and ONLY with US government work authorization.
 - Requires an application with the involvement of the staff person managing the student's SEVIS record.
 - Students are eligible for 365 days of OPT per level. (Masters, JD, Ph.D. Etc.)
 - USCIS processing of OPT requests can take up to 3 months.
- ❑ **International Organizations Off-Campus Exception -** of which there is a particular authorized list / before graduation only. (list provided in handout)
 - An approved application for International Organization Work Authorization does not use any OPT days. It is a very useful way to gain employment experience without subtracting from the 365 days of OPT.

Optional Practical Training (OPT)

- ❑ Must hold F-1 status for one academic year before being eligible to be employed "off-campus."
- ❑ After one academic year the student is eligible for 365 days of Optional Practical Training (OPT) per level.
 - OPT is US government approved work authorization **in the field of study**. Law students are **ONLY eligible to work in the field of law off-campus**.
 - Portions of the 365 days can be used during summers and breaks. Each summer's off-campus work authorization requires an application to USCIS and a fee. (currently \$340)
 - The student does NOT need a job offer to be eligible for OPT.
 - This differs from J-1 student status, for which a legally related job offer is required for off-campus work authorization
 - Each application process can take up to three months
 - Requires the involvement of the Foreign Student Advisor managing the student's SEVIS record
- ❑ F-1 and J-1 status holders cannot work off-campus for no pay. In most cases, even working for no compensation is considered off-campus employment and requires appropriate work authorization.

*Enforcement of the "intention to learn in one's field"
The primary activity under F-1 status after graduation & during the OPT
period*

New regulations in effect as of April 2008 for OPT:

- ❑ New regulations allow for a student to apply for OPT up to 60 days after graduation. This is not recommended. The USCIS processing time for an OPT application can take up to three months. No additional time is allotted to the OPT period for a late submission.
- ❑ A graduating student can apply up to 3 months before the completion of the program.
- ❑ A continuing student who has held F-1 status for less than one year can apply for "pre-completion OPT" up to 3 months before completing the one-year F-1 status requirement.
- ❑ Continuing students who have held F-1 status for one year can apply for OPT up to 4 months before the employment start date.

*Enforcement of the "intention to learn in one's field"
The primary activity under F-1 status after graduation & during the OPT
period (cont)*

- ❑ To maintain F-1 status and OPT work authorization after graduation:
 - The graduate must participate in paid or unpaid practical training during the approved OPT period not exceeding an aggregate of 90 days of unemployment among the entirety of the post-completion period.
 - This practical training requirement can be fulfilled by having legally related work (paid or unpaid) for at least 20 hours a week.
 - Exceeding an aggregate of 90 days of unemployment during the OPT period:
 - US officials may determine that F-1 status was not maintained. The graduate may have future problems obtaining US visas, change of status, and entry into the US.
 - It is best if the graduate does not use all 90 days of unemployment in the beginning of the OPT period.
 - The work has to be legally related, but not necessarily in the specific field of law studied. The OPT holder can work in any legally related position in which he or she is learning at a level appropriate for the academic degree. (Example: A student studying for an LLM in international law can work on domestic real estate transactions.)

How Career Counselors can help

- ❑ Provide resources for finding unpaid internships, volunteer positions, and connect the student with NGOs needing volunteers.
- ❑ Please keep in mind the definition of employment. The graduate must have OPT approval to work even for no pay if others are normally paid for the same position.
- ❑ Helpful websites:
 - <http://www.dol.gov/elaws/esa/flsa/scope/ee16.asp> Federal Department of Labor link that describes rules for volunteering
 - <http://pslaw.net.org>
 - <http://www.equaljusticeworks.org>
 - <http://equaljusticeworks.wordpress.com>
 - <http://www.idealists.org>
 - <http://lawschool.westlaw.com>

Compliance Tips

- ❑ Students and graduates holding F-1 or J-1 status must keep communicating with the university or sponsor to maintain work authorization and authorization to remain in the US.
- ❑ The online SEVIS system can be accessed by government officials, US embassy officials, and airport officials. It is maintained by the university or sponsoring organization.
- ❑ Working for "free" may actually be employment and may require US government work authorization.
- ❑ It usually is worth a student saving OPT days for after graduation so the student will be eligible for the F-1 to H-1B "Cap Gap" benefit.
- ❑ New regulations reinforce the premise that "the intention to learn in one's field" is the primary purpose of OPT. After graduation and during OPT, the graduate should not exceed 90 days of unemployment. Otherwise the student may lose F-1 status.
- ❑ During the post-completion OPT period, graduates must continue communicating with the university for the SEVIS record to be updated through the H-1B process. Not doing so risks the graduate's work authorization and eligibility to stay in the US.
- ❑ New regulations allow for a student to apply for OPT up to 60 days after graduation. This is not recommended. The USCIS processing time of the OPT applications can take up to three months. No additional time is allotted to the OPT period for a late submission.
- ❑ At this time an individual could have multiple SEVIS records. (Undergraduate, J.D, etc.) The Department of Homeland Security is moving SEVIS toward a one record/person system within the next 2 years. At that time, it is proposed that the F-1 and J-1 student and graduate will be able to update his or her own SEVIS record.

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Helpful links

- ❑ www.travel.state.gov Consulate and Embassy Information, nonimmigrant visa processes abroad.
- ❑ www.aiala.org American Immigration Lawyers Association
- ❑ www.visalaw.com Immigration Bulletin
- ❑ www.uscis.gov U.S. Citizenship and Immigration Services (forms, fees, and processing times)
- ❑ www.flcdcenter.com Federal Department of Labor Wage Library to determine the "prevailing wage" for a particular job in a particular area.
- ❑ <http://www.h1base.com/store.asp> Online service that offers international students some industry-by-industry lists of employers whose applications for H-1B visas have been approved in the recent past, thereby giving our students some idea as to employers they might want to investigate for current needs
- ❑ http://www.nafsa.org/regulatory_information.sec NAFSA serves international Educators and their institutions.
- ❑ http://www.ice.gov/dclib/sevis/pdf/cap_gap_factsheet.pdf New ICE memo on H-1B cap gap issues
- ❑ http://www.ice.gov/sevis/updates_postcompletion_opt.htm#9.%239 Additional information on cap gap relief
- ❑ www.millermayer.com Miller Mayer web site with immigration law information

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Questions and Answers

This program and any handouts or web publications are for educational purposes only and are not meant as legal advice. Individuals and organizations with questions regarding specific circumstances or situations should consult with an immigration attorney.

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