University of Pittsburgh

Office of International Services

Proposed Rule to Abolish Duration of Status (D/S)

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Agenda

- Duration of Status
- Proposed Rule Provisions
- Process for Enacting Regulation
- Resources and Comments Information
- Q&A

Duration of Status

- Most visa types receive a end date on their I-94
- F and J visa holders receive D/S
- Duration of Status: the period that a student or exchange visitor is pursuing his/her program of study/exchange

Proposed Rule: Date-Specific admission of F, J (and I) nonimmigrants

- Admission to the U.S. for a fixed period instead of duration of status (D/S). I-94 expiration date will be:
  - The program end date on Form I-20 or DS-2019, plus 30 days
  - May not exceed a 4 or 2-year maximum
  - F-1 grace period reduced to 30 days (currently 60)
  - Note: The rule doesn't necessarily mean that a school or program must limit the program time listed on I-20 or DS-2019… it would limit the period of admission that CBP or USCIS would give on the F or J's Form I-94

Two or Four Year Maximum I-94

- Groups subject to a limited 2-year admission instead of a 4-year admission:
  - State Sponsor of Terrorism List (born in or citizen of) –
    - Currently: North Korea, Iran, Sudan, and Syria
  - Country with > 10% student overstay rate (citizen of)
    - Currently: Afghanistan, Benin, Bhutan, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo-Brazzaville, Congo-Kinshasa, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, Iraq, Kenya, Kosovo, Kyrgyzstan, Liberia, Libya, Malawi, Mali, Mauritania, Moldova, Mongolia, Nepal, Niger, Nigeria, Papua New Guinea, the Philippines, Rwanda, Samoa, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Tajikistan, Tanzania, Togo, Tonga, Turkmenistan, Tuvalu, Uganda, Uzbekistan, Vietnam, Yemen and Zambia
  - School or exchange program not fully participating in E-Verify
  - U.S. national interest (e.g., nuclear science)
  - Unaccredited post-secondary institution (F-1 only)
  - Language training programs. “The student is attending an English language training program, which does not lead to a degree.”

Extension of Stay

- Individuals who need time beyond the period of admission on their I-94 would have to timely file a complete extension of stay application (Form I-539/I-539A) with USCIS before their I-94 expiration date.
  - To complete current program (F-1 and J-1)
  - For change of educational level (F-1) or matriculation (J-1)
  - For school or program transfer (F-1 and J-1)
  - To engage in OPT or STEM OPT (F-1, must also file I-765) or academic training (J-1)
- Period of extension = same rules as period of admission: time needed to complete the program or requested practical training, not to exceed 4 (or 2) years.

Extension of Stay Procedures

- File I-539 and pay I-539 and biometrics fee
- Complete biometrics collection
- Provide proof of funding for F-1 students extending educational program
- Possibility of an interview
- Dependents must also file I-539 and pay biometrics fee
- If I-539 is denied and the applicant's period of authorized stay expired while the application was pending, the applicant and dependents must immediately depart the U.S. There is no grace period.

Student Status While EOS is Pending

- If an EOS is filed prior to expiration of current status, the student remains in continuing F-1 status for 180 days beyond the current expiration
- Student may continue on-campus employment during that period
- CPT authorization ends at the end of the current I-94 and cannot continue while EOS is pending

Extension Restrictions

- 24-month aggregate limit on ESL study (not eligible for extension)
- Lifetime limit on extension of stay to pursue new F-1 programs at the same educational level. (2 times while in F-1 status for a total of 3 programs at same level)
- Lifetime limit on extension of stay to pursue "reverse matriculation" by F-1 students. (1 time while in F-1 status)

Extension Standards

Student "must establish to the satisfaction of USCIS" that the need for an extension is warranted by:

1) "compelling academic reasons"
    1) Inability to take the required classes in major due to over-enrollment
    2) Changes of major or research topics
    3) Unexpected research problems ("unexpected change in faculty advisor, need to refine investigatory topic based on initial research, research funding delays…")
2) "a documented illness or medical condition"
    1) "Supported by medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist."
3) "exceptional circumstances beyond the control of the alien"
    1) "Natural disaster, national health crisis, or the closure of an institution."
    2) "Passing a class, or not, is something that is within the student's control."

Transition Provisions

- Students in the U.S. on the final rule's effective date would transition to a fixed date of admission which would be:
  - The program end date on Form I-20 (or OPT EAD) or DS-2019
  - Plus an additional 60 days (F-1) or 30 days (J-1)
  - But not to exceed a period of 4 years from the effective date.
- Travel and Reentry after the final rule's effective date:
  - An F or J nonimmigrant who departs the U.S. and seeks admission after the final rule's effective date becomes subject to the fixed date framework imposed by the rule (i.e., a fixed term of 2 or 4 years.)

Process for Regulatory Changes

- Proposed Rule is published in Federal Register
- Comment Period is set
  - (30 – 60 days is not unusual but it can be 180 days or more if warranted by the complexity of the rule)
- Comments are read and considered
  - "To move forward with a final rule, the agency must conclude that its proposed solution will help accomplish the goals or solve the problems identified. It must also consider whether alternate solutions would be more effective or cost less."
- Final Rule is published in Federal Register and the Effective date is established
  - The effective date is no less than thirty days after the date of publication unless the agency shows good cause why an earlier effective date is in the public interest

Comment Period

- The comment period is open through October 26, 2020
- As of this morning 25,300+ had been received
- https://beta.regulations.gov/document/ICEB-2019-0006-0001

Resources

- https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status
- https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf

QUESTIONS?

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