



immigration
concepts

Fundamentals of Foreign Student Advising:

J-1 For Beginners



Your Instructor

Ron Cushing is the Director of International Services at a large urban research university with thousands of international students. Immigration Concepts offers the most comprehensive training programs in the field.





Introduction

J-1 for Beginners is designed to give new practitioners an introduction into how to use federal regulations when evaluating situations commonly encountered by Responsible Officers.

Participants will be challenged to actively participate by applying the meaning of federal regulations to specific case studies.



Introduction Continued

Understanding the regulations has never been more important than they are now. Action taken (or not taken) as a result of an RO's understanding of the regulations can put an exchange visitor's legal status and the school's certification in jeopardy.

The regulations are the most important thing we need to understand in our profession. We must develop more self-confidence among ourselves, read the actual regulations, and develop reasonable courses of action based on those regulations.



Topics to be Covered

- How is immigration law made?
- Important terminology in the field
- Record keeping requirements
- DS-2019 issuance
- Duration of status
- Categories of participation
- Change in category
- Insurance requirement
- Travel and reentry
- Reinstatement



Making Immigration Law

There are many sources of law governing immigration. The main source of immigration law is statutes enacted by Congress. Most of the laws affecting immigration are contained in the [Immigration and Nationality Act](#), often referred to as "the Act" or simply as the "INA". Although the provisions (terms) of most statutes affecting immigration are reflected in the INA, many are not codified in the INA and must be found in the original legislation in which they were enacted.

The Immigration and Nationality Act, or INA, was created in 1952. The INA is divided into titles, chapters, and sections. Although it stands alone as a body of law, the Act is also contained in the [United States Code \(U.S.C.\)](#). The code is a collection of all the laws of the United States. It is arranged in fifty subject titles by general alphabetic order. Title 8 of the U.S. Code is but one of the fifty titles and deals with "Aliens and Nationality".

Once Congress passes a law, rules or regulations are developed by an agency. These rules/regulations describe how the agency will implement the law. "Rules" and "regulations" mean the same thing. The Office of the Federal Register is the official government entity responsible for publishing all agency rules and regulations. Typically, rules and regulations will take one of the following forms:



a. Proposed rules

These are documents published in the Federal Register that propose changes to an Agency's regulations in the CFR and request public comments on those suggested changes. In compliance with the Administrative Procedures Act (APA) (5 U.S.C. 553), most documents should be published first as proposed rules.



b. Interim Rules

Usually an Agency will issue an interim rule if there is a statutory or emergency requirement to issue regulations immediately. Interim rules are documents that have the same legal effect as final rules in that they amend the CFR and give an effective date. Even though there is an effective date for the interim rule, agencies often ask for public comments. After the comment period expires, the agency amends the interim rule by issuing a final rule.



c. Final rules

Final rules are documents that formally change/amend the CFR by adding, revising, or removing language/text, sections, or whole parts of the existing regulations. Public comments submitted in response to a Proposed or Interim rule may lead to the agencies' modification of its final regulations. A regulatory document that amends the CFR text must publish each change to the CFR in full and state the effective date for any change.



d. Notices/Policy Memorandums

Notices are documents published in the Federal Register. Policy memorandums are posted on agency websites. Notices and policy memorandums discuss or explain matters of general concern regarding particular regulations and are published for public information. Typical notice documents announce meetings and application submission dates. Policy memorandums explain adjudication procedures for USCIS personnel. Notices and policy memorandums do not amend the CFR.



Interpreting the Regulations

“Interpreting the regulations” is a loaded phrase. Most regulations do not require any interpretation at all. They say what they mean in clear language.

The regulations that do require some interpretation typically lend themselves only to a narrow range of possibilities. It is, in other words, not a high art. There are some ground rules:

1. Is there more than one regulation relevant to this issue? Often times you need to look at more than one regulation to have a full understanding of a particular situation.
2. Is one regulation on this subject more specific than the other(s)? The more specific regulation always takes precedence over the less specific.
3. Have you checked the dictionary? The words in regulations must be applied according to their precise meanings.



Interpreting the Regulations

4. Am I trying to prove a negative? Don't expect regulations to tell you what is permitted. Anything not prohibited by regulation or law is permitted.
5. What viewpoint am I taking? Only one viewpoint is valid in interpreting student regulations - that of an educator. Education and cultural exchange is the purpose of the J-1 program and the goal of the regulations. The exchange visitor viewpoint and the law enforcer viewpoint will undermine interpretation.
6. Is this a matter of Department of Homeland Security jurisdiction? You won't find anything in DHS regulations about visa issuance, income taxes, social security, criminal acts on the part of student, in-state tuition eligibility at public schools, or financial aid eligibility. Those are matters under the jurisdiction of the State Department, IRS, the Social Security Administration, local police or the FBI, your state government, or a combination of state and federal education departments.



Interpreting the Regulations

Never trust an “interpretation” based on “the intent of the regulations”. Regulations don’t have intent. If DHS says something they did not intend to say, they are stuck with it as a matter of law.

Don’t go beyond the regulations. If the regulations say that an exchange visitor can do something, it’s final. You cannot take that right away. An RO/ARO has the discretion specifically described in regulations and no more.



Importance of using proper terminology

Like every specialized profession, international student advisement has a host of acronyms and terminology that is used on a daily basis. The following is not an exhaustive list, just a good basic overview.

- **Department of Homeland Security.** A Cabinet level department responsible for securing the nation's borders and managing the immigration process. DHS assumes responsibilities for activities and services previously handled by the Immigration and Naturalization Service. DHS has divided immigration services and border enforcement into separate agencies.
- **CIS- U.S. Citizenship and Immigration Services.** An agency within the Department of Homeland Security with jurisdiction over the status of nonimmigrants within the boundaries of the U.S., including exchange visitors. This agency has direct oversight of immigration related benefits including changes of status, employment authorization, etc.
- **ICE- U.S. Immigration and Customs Enforcement.** An agency within the Department of Homeland Security with jurisdiction over immigration enforcement issues. This is the agency with direct oversight of the SEVIS program.
- **CBP- U.S. Customs and Border Protection.** An agency within the Department of Homeland Security responsible for inspections at U.S. ports of entry, for the border patrol, and for the Customs Service.



Duration of Status (D/S)

D/S- Stands for “Duration of Status” for F, J and M students and dependents. This means the time a student is pursuing a full course of study, plus academic or practical training, and a 60 day grace period (for F’s) or a 30 day grace period (for J’s and M’s).



Responsible Officers

- **ARO- Alternative Responsible Officer.** A person designated by the president or chief executive officer of a school authorized by DHS to accept or sponsor J-1 exchange visitors to sign immigration documents and advise exchange visitors. Only an RO/ARO can sign a Form DS-2019 or put information into SEVIS.
- **RO- Responsible Officer.** The person designated by the president or chief executive officer of school to have oversight of other ARO's and the institutions compliance with the SEVIS system. Each school can have one RO.



DS-2019

Form DS-2019- A certificate of eligibility used to apply for a J-1 exchange visitor visa or immigration status.



U.S. Department of State
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR(J-1) STATUS

OMB APPROVAL NO.1405-0119
 EXPIRES: 02-28-2005
 ESTIMATED BURDEN TIME: 45 min
 *See Page 2

1. Family Name: Bearcat		First Name: Joseph		Middle Name:		Gender: MALE		N000000001						
Date of Birth (mm-dd-yyyy): 05-31-1974		City of Birth: Tempio Pausania		Country of Birth: ITALY		Citizenship Country Code: IT		Citizenship Country: ITALY						
Legal Permanent Residence Country Code: IT		Legal Permanent Residence Country: ITALY		Position Code: 214		Position: UNIVERSITY GRADUATE STUDENTS								
U.S. Address: Department of Molecular Genetics Cincinnati, OH 45221-0524														
2. Program Sponsor: University of Cincinnati								Exchange Visitor Program Number: P-1-00733						
Participating Program Official Description: PROFESSOR; RESEARCH SCHOLAR; SHORT-TERM SCHOLAR; SPECIALIST; STUDENT ASSOCIATE; STUDENT BACHELORS; STUDENT DOCTORATE; STUDENT MASTERS; STUDENT NON-DEGREE														
Purpose of this form: Begin a new program														
3. Form Covers Period: From (mm-dd-yyyy): 09-01-2010 To (mm-dd-yyyy): 08-31-2015					4. Exchange Visitor Category: Research Scholar Subject/Field Code: 26.0802 Subject/Field Code Description: Molecular Genetics (NEW)									
5. During the period covered by this form, the total estimated financial support(in U.S. \$) is to be provided to the exchange visitor by: Current Program Sponsor funds : \$33, 813 Total : \$3,813														
6. U.S. DEPARTMENT OF STATE / INS USE OR CERTIFICATION BY RESPONSIBLE OFFICER THAT A NOTIFICATION COPY OF THIS FORM HAS BEEN PROVIDED TO THE U.S. DEPARTMENT OF STATE (INCLUDE DATE).					7. Ronald Cushing Name of Official Preparing Form 2548 Clifton Avenue Cincinnati, OH 45221 Address of Responsible Officer or Alternate Responsible Officer Signature of Responsible Officer or Alternate Responsible Officer					Responsible Officer Title 513-556-2879 Telephone Number 03-21-2007 Date (mm-dd-yyyy)				
8. Statement of Responsible Officer for Releasing Sponsor (FOR TRANSFER OF PROGRAM) Effective date(mm-dd-yyyy): _____, Transfer of this exchange visitor from program number _____ sponsored by _____ to the program specified in item 2 is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961, as amended.														
Signature of Responsible Officer or Alternate Responsible Officer					Date (mm-dd-yyyy) of Signature									
PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-484, AS AMENDED (see item 1(a) of page 2). The Exchange Visitor in the above program: 1. <input type="checkbox"/> Not subject to the two-year residence requirement. 2. <input type="checkbox"/> Subject to two-year residence requirement based on: A. <input type="checkbox"/> Government financing and/or B. <input type="checkbox"/> The Exchange Visitor Skills List and/or C. <input type="checkbox"/> PL 94-484 as amended						TRAVEL VALIDATION BY RESPONSIBLE OFFICER (Maximum validation period is one year*) *EXCEPT: Maximum validation period is up to six months for Short-term Scholars and four months for Camp Counselors and Summer Travel/Work. (1) Exchange Visitor is in good standing at the present time _____ Date (mm-dd-yyyy) Signature of Responsible Officer or Alternate Responsible Officer (2) Exchange Visitor is in good standing at the present time _____ Date (mm-dd-yyyy) Signature of Responsible Officer or Alternate Responsible Officer								
Name			Title			Signature of Consular or Immigration Officer			Date (mm-dd-yyyy)					
THE U. S. DEPARTMENT OF STATE RESERVES THE RIGHT TO MAKE FINAL DETERMINATION REGARDING 212 (e).														
EXCHANGE VISITOR CERTIFICATION: I have read and agree with the statement on item 2 on page 2 of this document.														
Signature of Applicant			Place			Date (mm-dd-yyyy)								





DS-7002

Form DS-7002- A training/internship placement plan that is required for J-1 exchange visitors participating in training or internship programs. The form is signed by the J-1 program sponsor, the exchange visitor and employer providing the internship/training opportunity. It is presented to the U.S. Consulate/Embassy as part of the visa application process.



TRAINING/INTERNSHIP PLACEMENT PLAN

Check one: <input type="checkbox"/> Trainee <input type="checkbox"/> Intern	Occupational Field	Number of Years of Experience	
	Level of Degree	Date Awarded (mm-dd-yyyy)	Field of Study
PARTICIPANT INFORMATION			
Trainee/Intern Name (Last, First, MI)		U.S. Residence Address	
U.S. Telephone Number	FAX Number	Email Address	
SITE OF ACTIVITY INFORMATION			
Host Organization		Address	
Supervisor's Name (Last, First, MI)		Email Address	
Phone Number	FAX Number	Supervisor's Title	
Dates of Program (mm-dd-yyyy) From _____ To _____	Hours Per Week	Will Trainee/Intern receive a stipend? <input type="checkbox"/> Yes <input type="checkbox"/> No	If so, how much? \$ _____ per _____
CONTRACT AGREEMENT			
NOTE- Sponsors will not approve any contracts, and Trainees/Interns may not begin their programs until both a Training/Internship Placement Plan (page 2) and proof of required insurance that meets 22 CFR 62.14 is on file with the sponsor.			
Trainee/Intern- I hereby acknowledge, understand and agree to the attached Training/Internship Placement Plan.			
Trainee/Intern Signature		Date (mm-dd-yyyy)	
Supervisor- I certify that I will provide on-site supervision and that this training/internship is known and approved by this company/business or organization (site of activity). I will ensure that the required insurance is in place that meets 22 CFR 62.14 and provide the sponsor with written evaluations of the trainee/intern's performance, including the number of hours performed, the type of training, and the quality of the performance. At minimum, I will submit the evaluation at the mid-point and end of the program.			
Supervisor's Signature		Date (mm-dd-yyyy)	
Sponsor- I approve the attached Training/Internship Placement Plan. I certify the following:			
<ol style="list-style-type: none"> Sufficient planning, equipment, and trained personnel will be dedicated to provide the training/internship specified; The training/internship program is not designed to recruit and train aliens for employment in the United States; Trainees/Interns will not displace full-time or part-time U.S. employees; and That training and internship programs in the field of agriculture meet all requirements of the Employment Relationship under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act (29 CFR Part 500). 			
I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both."			
Sponsor's Signature (RO/ARO)		Date (mm-dd-yyyy)	
Program Sponsor Name		Program Number	



Form I-94

Form I-94- An arrival/departure record issued to students upon arrival in the U.S. It is their most important immigration document because it's the document that establishes their immigration status and the duration of stay.

The paper I-94 is no longer issued. I-94 arrival/departure records are stored electronically at <https://www.cbp.gov/i94>. Exchange visitors must print the form when needed for benefits like academic training, social security cards, etc.



Students who arrived prior to April 30, 2013 will still have a paper I-94 card.

Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; *you must surrender it when you leave the U.S.* Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 **prior to surrendering this permit.**

Record of Changes

Port:

Departure Record

Date:

Departure Number
237496463 01

U. S. IMMIGRATION
240 CIN 2

Immigration and
Naturalization Service

I-94
Departure Record

JAN XX 1997

UNTIL F-1 (CLASS)
D/S

14 Family Name
BEARCAT

15 First (Given) Name
JOE

16 Birth Date (Day/Mo/Yr)
25.12.64

17 Country of Citizenship
CHINA


(SAMPLE I-94 CARDS ONLY)

See Other Side

STAPLE HERE



Students who arrived after April 30, 2013 will need to print the I-94 card from the CBP website at <https://i94.cbp.dhs.gov/i94>

 **U.S. Customs and Border Protection**
Securing America's Borders

Get I-94 Number | I-94 FAQ

OMB No. 1651-0111
Expiration Date: 11/30/2014

Admission (I-94) Number Retrieval

Get I-94 Number

The following information is required to retrieve your Admission (I-94) number. Enter the information as it appears on your visa. If you do not have a visa, use the information as it appears on the biographic page of the passport you used to enter the United States.

*See our [Privacy Policy](#) regarding our request for your personal information.

Family Name:

First (Given) Name:

Birth Date (MM/DD/YYYY): [select](#)

Passport Number:

Country of Issuance: ▼

Date of Entry (MM/DD/YYYY): [select](#)

Class of Admission: ▼



U.S. Customs and Border Protection

Securing America's Borders

Get I-94 Number

I-94 FAQ

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69000888062

Admit Until Date (MM/DD/YYYY): 10/10/2012

Details provided on Admission(I-94) form:

Family Name:	LI
First (Given) Name:	LYDIA
Birth Date (MM/DD/YYYY):	01/01/1990
Passport Number:	P123123213
Passport Country of Issuance:	Mexico
Date of Entry (MMDD/YYYY):	04/11/2012
Class of Admission:	B1



Visa Stamp

Visa - A travel stamp issued by the US Department of State. It does not grant permission to enter or remain in the United States. It allows the holder of the visa to apply at a port of entry for admission to the US. At the port of entry, the decision on whether or not to admit the individual, and in which status, is made by an entirely different agency of government, the Department of Homeland Security.



SEVIS

SEVIS- The Student and Exchange Visitor Information System. This electronic reporting and record-keeping system requires all institutions that host F, J, or M students to record, on an “events-based” schedule, DS-2019 issuance, work recommendations and authorizations, exchange visitor violations, etc.



SEVP

SEVP- The Student and Exchange Visitor Program is the administrative unit in charge of the SEVIS system and acts as the bridge for varied government organizations that have an interest in information on foreign students and exchange visitors.



Visa Status

Visa Status - This is the most improperly used term in the field. International student advisors and other international educators, in large part, use the term “visa status.” There is, of course, no such thing as “visa status.” After the CBP admits the person to the US, the visa no longer matters. Unless the alien travels again outside the US and needs to reenter, the visa has no further purpose and can expire. In fact, most visas will likely expire during the course of an exchange visitor's program. In addition, a person’s immigration status often times can be different from the visa stamp in the passport. Thousands of temporary nonimmigrant aliens change status within the US each year, particularly from B-2 to F-1. The change has no effect on the visa, which remains as it was. The proper use of the term then is “status” or “immigration status.”



The Incidents

We are now going to take a look at some case studies to help show how to use the regulations when evaluating situations commonly encountered by Responsible Officers/Alternate Responsible Officers.



Incident #1

62.4(f) Categories of Participant Eligibility and 62.10 Program Administration (selection of exchange visitors)

Rocky Balboa from Italy has a bachelor's degree in Boxing Scientology. After graduating from College Rocky had a five year professional boxing career and for the past 10 years has run his own boxing gym. Your athletic department wants Rocky to come to campus for one year as a Research Scholar to collaborate with your boxing coaches on developing effective training methods.

Is Rocky eligible for Exchange Visitor status as a Research Scholar?



Sec. 62.4 Categories of Participant Eligibility

- (e) **Professor.** An individual primarily teaching, lecturing, observing, or consulting a post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.
- (f) **Research scholar.** An individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor.
- (g) **Specialist.** An individual who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills.



Sec. 62. 10 Program administration.

Sponsors are responsible for the effective administration of their exchange visitor programs. These responsibilities include:

- (a) Selection of exchange visitors. Sponsors shall provide a system to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:
 - (1) The program is suitable to the exchange visitor's background, needs, and experience; and
 - (2) The exchange visitor possesses sufficient proficiency in the English language to participate in his or her program.



Answer

62.4(f) states that an individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions is eligible for Exchange Visitor status. Section 62.10(a) stipulates that sponsors shall provide a system to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that the program is suitable to the exchange visitor's background, needs, and experience. There is no stipulation that research scholars must have obtained a specific educational level and Rocky Balboa has clearly obtained the skills necessary to engage in a collaborative project at the college/university level, and is, therefore, eligible for J-1 exchange visitor status.



Incident #2

62.4(a) Categories of Participant Eligibility and 62.23 College & University Students (full course of study requirement)

Pebbles Flintstone wants a DS-2019 to study at your University. She does not want to apply to a degree program, but rather wants to come study for one academic year “to gain an intercultural experience.” She has adequate financial support for her year of study.

Can you issue a DS-2019 to Pebbles? Why or why not?



Sec. 62.4 Categories of Participant Eligibility

Sponsors may select foreign nationals to participate in their exchange visitor programs. Participation by foreign nationals in an exchange visitor program is limited to individuals who shall be engaged in the following activities in the United States:

(a) Student. An individual who is:

(1) Studying in the United States:

- (i) Pursuing a full course of study at a secondary accredited educational institution;
- (ii) Pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or
- (iii) Engaged full-time in a prescribed course of study of up to 24 months duration conducted by:
 - (A) A post-secondary accredited educational institution; or
 - (B) An institute approved by or acceptable to the post-secondary accredited educational institution where the student is to be enrolled upon completion of the non-degree program;



Sec. 62. 23 College and university students

- (e) Full course of study requirement. A student, other than a student intern described in paragraph (h)(3)(i) of this section, must pursue a full course of study at a post-secondary accredited academic institution in the United States as defined in § 62.2, except under the following circumstances:
- (1) Vacation. During official school breaks and summer vacations if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar may be permitted to take the annual vacation during any one of the quarters or trimesters instead of during the summer.
 - (2) Medical illness. If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer a written statement from a physician requiring or recommending an interruption or reduction in studies.
 - (3) Bona fide academic reason. If the student is compelled to pursue less than a full course of study for a term and the student presents to the responsible officer a written statement from the academic dean or advisor recommending the student to reduce his or her academic load to less than a full course of study due to an academic reason.
 - (4) Non-degree program. If the student is engaged full time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited academic institution.
 - (5) Academic training. If the student is participating in authorized academic training in accordance with paragraph (f) of this section.
 - (6) Final term. If the student needs less than a full course of study to complete the academic requirements in his or her final term.



Answer

According to 62.4(a) an exchange student must be: (ii) Pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or (iii) Engaged full-time in a prescribed course of study of up to 24 months duration conducted by a post-secondary accredited educational institution. Further, 62.23 for College and University students, establishes the criteria that is to be met for qualifying for exchange student status. Pebbles is not going to participate in an exchange program or any prescribed full course of study as established by your institution. She is not eligible for a DS-2019 form.



Incident #3

62.20(d)(1) Professors and Research Scholars (visitor eligibility)

Yosemite Sam is the candidate of choice for your History Department to fill an opening for a faculty member specializing in Old West History. The position is a tenure track position. Knowing that the H-1B specialty worker process is more time consuming and expensive they request your office to issue a DS-2019 for Yosemite Sam to obtain J-1 Exchange Visitor status.

Can you issue a DS-2019 for Yosemite Sam?



Sec. 62.20(d)(1) Professors and Research Scholars (visitor eligibility)

- (d) *Visitor eligibility.* An individual may be selected for participation in the Exchange Visitor Program as a professor or research scholar subject to the following conditions:
- (1) The participant must not be a candidate for a tenure track position;
 - (2) The participant has not been physically present in the United States as a nonimmigrant pursuant to the provisions of 8 U.S.C. 1101(a)(15)(J) for all or part of the twelve-month period immediately preceding the date of program commencement set forth on his or her Form DS-2019, unless:
 - (i) The participant is transferring to the sponsor's program pursuant to provisions set forth in §62.42;
 - (ii) The participant's presence in the United States was of less than six months duration; or
 - (iii) The participant's presence in the United States was pursuant to a short-term scholar exchange activity as authorized by §62.21; and



Answer

According to 62.20(d)(1) the candidate for exchange visitor status must not be a candidate for a tenure track position. Since the position is for a tenure track job Yosemite is ineligible to fill it on J-1 status.



Incident #4

62.20(g) Professors and Research Scholars (occasional lectures and consultations)

Luke Skywalker is a J-1 Exchange Visitor in the Professor category teaching Jedi Knighthood at your school. Being a Jedi Master, Luke's expertise is in much demand. Another institution wants Luke to come to their campus and conduct a two-day workshop on Lightsaber technology. They want to pay Luke for this presentation.

Is Luke Skywalker eligible to be paid for this workshop?



Sec. 62.20(g) Occasional Lectures

- (g) *Occasional lectures or consultations.* Professors and research scholars may participate in occasional lectures and short-term consultations, if authorized to do so by his or her sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. If wages or other remuneration are received by the exchange visitor for such activities, the exchange visitor must act as an independent contractor, as such term is defined in 8 CFR 274a.1(j), and the following criteria and procedures must be satisfied:
- (1) *Criteria.* The occasional lectures or short-term consultations must:
 - (i) Be directly related to the objectives of the exchange visitor's program;
 - (ii) Be incidental to the exchange visitor's primary program activities;
 - (iii) Not delay the completion date of the exchange visitor's program; and
 - (iv) Be documented in SEVIS.



Answer

According to 62.20(g) the lecture/consultation must be incidental to the primary program activities, not delay the completion of the established program, and must be directly related to the exchange visitor program. All of those criteria are met in Luke's case. As such, you can authorize Luke for the consultation/lecture.



Incident #5

62.45 Reinstatement to Valid Program Status

Luke Skywalker was paid to give a two-day workshop on Lightsaber technology to another institution. He did so without receiving prior authorization from you or another Responsible Officer.

Should you terminate Luke's J-1 Exchange Visitor Program?



Sec. 62.45 Reinstatement to valid program status

(a) *Definitions.* For purpose of this section--

You means the Responsible Officer or Alternate Responsible Officer;

Exchange visitor means the person who enters the United States on a J visa in order to participate in an exchange program designated by the Secretary of State of the Department of State.

Fails or failed to maintain valid program status means the status of an exchange visitor who has completed, concluded, ceased, interrupted, graduated from, or otherwise terminated the exchange visitor's participation in the exchange program, or who remains in the United States beyond the end date on the exchange visitor's current Form DS-2019.

Unauthorized employment means any employment not properly authorized by you or by the Attorney General, i.e., the Immigration and Naturalization Service, prior to commencement of employment. Unauthorized employment does not include activities that are normally approvable, as described in paragraph (c)(3) of this section.

We, our, or us means the office of Exchange Visitor Program Services of the Department of State.



Sec. 62.45 Reinstatement to valid program status

(c) What violations or infractions of the regulations in this part do we consider to be technical or minor ones, and how do you correct the record? We consider the following to be examples of technical or minor infractions which you are authorized to correct:

- (1) Failure to extend the Form DS-2019 in a timely manner (i.e. , prior to the end date on the current Form DS-2019) due to inadvertence or neglect on your part or on the part of the exchange visitor.
- (2) Failure on the part of the exchange visitor to conclude a transfer of program prior to the end date on the current Form DS-2019 due to administrative delay or oversight, inadvertence or neglect on your part or on the part of the exchange visitor;
- (3) Failure to receive your prior approval and/or an amended Form DS-2019 before accepting an honorarium or other type of payment for engaging in a normally approvable and appropriate activity. Example, a lecture, consultation, or other activity appropriate to the category which is provided by a professor, research scholar, short-term scholar or specialist without prior approval or an amended Form DS-2019 issued prior to the occurrence of the activity.



Answer

The J-1 exchange visitor regulations give Responsible Officers the authority to correct minor infractions. A minor infraction would include engaging in employment without the proper authorization that is otherwise eligible for authorization. 62.45(a) and (c)(3) cite the specific example of Research Scholar who gives a lecture without receiving the prior written approval of the Responsible Officer as a minor infraction. As such, you should not terminate Luke Skywalker's Exchange Visitor program. You should instead authorize the lecture in SEVIS and in writing.



Incident #6

62.23(c)(1) and (4) College and University Students (selection criteria)

George Jetson has been admitted to your institution for full time study for a master's degree in Aerospace Engineering. George has a wife, Jane, and two kids, Judy and Elroy. George is entirely supported by personal and family funds. You issue George I-20's so he and his family can enter on F-1 and F-2 status respectively. George knows that Jane, Judy and Elroy would be eligible to obtain work permits if they enter the U.S. on J-2 status so he calls you and asks that you issue him DS-2019's instead of I-20's.

Can you issue George and his family DS-2019's? Would your answer change if George were being fully funded by his home government?



Sec. 62.23(c) College and University Students

- (c) Selection criteria. A sponsor selects the college and university students who participate in its exchange visitor program. A sponsor must secure sufficient background information on the students to ensure that they have the academic credentials required for its program. A student is eligible for participation in the Exchange Visitor Program if at any time during his or her educational program in the United States:
- (1) The student or his or her program is financed directly or indirectly by:
 - (i) The United States Government;
 - (ii) The government of the student's home country; or
 - (iii) An international organization of which the United States is a member by treaty or statute;
 - (2) The program is carried out pursuant to an agreement between the United States Government and a foreign government;
 - (3) The program is carried out pursuant to written agreement between:
 - (i) American and foreign academic institutions;
 - (ii) An American academic institution and a foreign government; or
 - (iii) A state or local government in the United States and a foreign government;
 - (4) The student is supported substantially by funding from any source other than personal or family funds; or
 - (5) The student is participating in a student internship program as described in paragraph (i) of this section.



Answer

Under section 62.23(c) establishes the selection criteria for exchange visitor status including if the student is funded substantially from sources other than personal funds. None of the criteria for being selected as an exchange visitor apply in George's case. Therefore, George Jetson is ineligible for a DS-2019. He would be eligible for a DS-2019 if his funding was coming from his home government.



Incident #7

62.20(h) Professors and Research Scholars (category changes)

James Bond is conducting research at your institution on government sponsored security clearances. James is an expert in anti-spy activities and the sponsoring department wants James to teach full time for the final two quarters of his Exchange Visitor program.

Do you need to apply for a change of category from Research Scholar to Professor for James?



Sec. 62.20(h) Professors and Research Scholars

(h) *Change of activity.* At the discretion and approval of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing. Because these activities are intertwined, such a change of activity is not considered a change of category necessitating formal approval by the Department of State and does not require the issuance of a new Form DS-2019 to reflect a change in category. Such change in activity does not extend the exchange visitor's maximum duration of program participation.



Answer

No change of category would be required for James to teach during the final two quarters of his Exchange Visitor program. According to 62.20(h), “professors may freely engage in research and research scholars may freely engage in teaching and lecturing”. These activities are considered to be intertwined and a formal approval by the Department of State is not required. Neither is the issuance of a new Form DS–2019 to reflect a change in category.



Incident #8

62.23(f)(4) College and University Students (academic training)

George Shrinks just completed his master's degree in Human Growth Sciences from your institution. He has been offered a three year post-doctoral fellowship at the National Institute of Health (NIH).

Is George Eligible to complete all three years of post-doctoral fellowship using J-1 Academic Training?



Sec. 62.23(f)(4) Academic Training

- (4) Time limitations . The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:
- (i) Is approved by the academic dean or advisor and approved by the responsible officer;
 - (ii) For undergraduate and pre-doctoral training, does not exceed 18 months, inclusive of any prior academic training in the United States, or the period of full course of study in the United States, whichever is less; except that additional time for academic training is allowed to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his or her degree program in the United States;
 - (iii) For post-doctoral training, does not exceed a total of 36 months, inclusive of any prior academic training in the United States as an exchange visitor, or the period of the full course of study in the United States, whichever is less.



Answer

George would not be eligible to complete all three years of the post-doctoral Fellowship using J-1 Academic Training. According to 62.23(f)(4) academic training at the undergraduate or pre-doctoral level may not exceed 18 months. Only students who complete a doctoral degree are eligible for three years of academic training.



Incident #9

62.23(g) College and University Students (student employment)

Elmer Fudd is working for your campus food service. One week Elmer works 25 hours and the next week he works 15 hours. The two week average for Elmer's work is 20 hours.

Has Elmer violated his status?



Sec. 62.23(g) Student Employment

- (g) Student employment. A student, other than a student intern described in paragraph (i) of this section, may engage in part-time employment when the following criteria and conditions are satisfied.
- (1) The student employment:
 - (i) Is pursuant to the terms of a scholarship, fellowship, or assistantship;
 - (ii) Occurs on the premises of the post-secondary accredited academic institution the visitor is authorized to attend; or
 - (iii) Occurs off-campus when necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring exchange visitor status.
 - (2) A student may engage in employment as provided in paragraph (g)(1) of this section if the:
 - (i) Student is in good academic standing at the post-secondary accredited academic institution;
 - (ii) Student continues to engage in a full course of study, except for official school breaks and the student's annual vacation;
 - (iii) Employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation; and
 - (iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid for up to 12 months, but is automatically withdrawn if the student's program is transferred or terminated.



Answer

62.23(g)(2)(iii) states that student can work on campus provided the “Employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation”. This is a weekly requirement, not an average. As such, Elmer has violated his status.



Incident #10

62.20(i)(2) Professors and Research Scholars (repeat participation)

Joseph Bearcat was a J-1 Exchange Visitor in the Research Scholar category at your institution from September 1 of the previous year to September 1 of the current year. The original sponsoring department wants to have him come back as a Research Scholar beginning September 1 next year (12 months after leaving initially).

Is Joseph Bearcat eligible to return as a J-1 Research Scholar in this case?



Sec. 62.20(i)(2) Repeat Participation

- (i) *Duration of participation.* The permitted duration of program participation for a professor or research scholar is as follows:
- (1) *General limitation.* A professor or research scholar may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete his or her program, provided such time does not exceed five years. The five-year period of permitted program participation is continuous and begins with the initial program begin date documented in SEVIS or the date such status was acquired via a petition submitted and approved by the Department of Homeland Security (DHS) as documented in SEVIS and ends five years from such date.
 - (2) *Repeat participation.* Exchange participants who have entered the United States under the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States, and who have completed his or her program are not eligible for participation as a professor or research scholar for a period of two years following the end date of such program participation as identified in SEVIS.



Answer

According to 62.20(i)(2), once an exchange visitor has completed a J-1 exchange visitor program as a Professor or Research Scholar, that visitor is ineligible to return in those categories for a period of two years. As such, Joseph Bearcat is ineligible to return as a J-1 Research Scholar until he has been absent from the U.S. for 24 months.



Incident #11

248.2 (4) Ineligible Classes

Fred Flinstone is a J-1 Research Scholar at your institution. He has reached the 5 year limit for participating as a research scholar and would like to change status to H-1B Specialty Worker. Fred is subject to rule 212.e-two year foreign residency requirement. Fred has not received a waiver of rule 212.e.

Is Fred Eligible to change immigration status to H-1B?



Sec. 248.2 Ineligible classes Continued

- (4) Any alien classified as a nonimmigrant under section 101(a)(15)(J) of the Act (other than an alien described in paragraph (c) of this section) who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement, except when the alien applies to change to a classification under section 101(a)(15)(A) or (G) of the Act. (Previous paragraph (d) redesignated as paragraph (a) (4) effective 10/17/07; 72 FR 53014)
- (5) Any alien admitted as a visitor under the visa waiver provisions of § 212.1(e) of this chapter. (Previous paragraph (e) redesignated as paragraph (a) (5) effective 10/17/07; 72 FR 53014)
- (6) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter. (Previous paragraph (f) redesignated as paragraph (a) (6) effective 10/17/07; 72 FR 53014)
 - (b) The prohibition against a change of nonimmigrant status for the categories of aliens described in paragraphs (a)(1) through (6) of this section is inapplicable to aliens applying for a change of nonimmigrant status to that of a nonimmigrant under section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U). (Paragraph (b) added, previous paragraph (b) now paragraph (a)(2); Effective 10/17/07; 72 FR 53014)

(Amended 8/25/95; 60 FR 44260)(Amended 5/18/95; 60 FR 26676) [47 FR 44238, Oct. 7, 1982, as amended at 48 FR 41017, Sept. 13, 1983; 52 FR 48084, Dec. 18, 1987; 53 FR 24903, June 30, 1988]



Answer

248.2(a)(4) states that “Any alien classified as a nonimmigrant under section 101(a)(15)(J) of the Act who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement” is ineligible to change status. Therefore, Fred is not eligible to change status to H-1B.



Incident #12

62.42 Transfer of Program and 62.76 Transfer Procedures

Bugs Bunny is a J-1 research scholar at another institution. His program there will end on June 30th of the current year. One of your departments wants him to start working at your institution on September 1st. The current institution will release his record to you effective July 1st.

Is Bugs Bunny eligible to transfer to your institution?



Sec. 62.42 Transfer of program

- (a) Program sponsors may, pursuant to the provisions set forth in this section, permit an exchange visitor to transfer from one designated program to another designated program.
- (b) The responsible officer of the program to which the exchange visitor is transferring:
 - (1) Shall verify the exchange visitor's visa status and program eligibility;
 - (2) Execute the Form DS-2019; and
 - (3) Secure the written release of the current sponsor.
- (c) Upon return of the completed Form DS-2019, the responsible officer of the program to which the exchange visitor has transferred shall provide:
 - (1) The exchange visitor his or her copy of the Form DS-2019; and
 - (2) A notification copy of such form to the Department of State.



62.76 Transfer procedures

- (a) Program sponsors may, pursuant to the provisions set forth in §62.42, permit an exchange visitor to transfer from one designated program to another designated program. Transfers will not extend the maximum duration of participation for the category in which the exchange visitor is currently participating.
- (b) Current sponsor and transfer sponsor shall communicate appropriately to ensure an uninterrupted transfer, continuous status of the exchange visitor and proper change of address reporting and shall utilize the provisions of this section to effect such transfer.



62.76 Transfer Procedures

(1) SEVIS-to-SEVIS transfer. When both the transfer and current sponsors are enrolled in SEVIS, a transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of the current status and eligibility to transfer by the transfer sponsor, the current sponsor shall update the exchange visitor's record by processing a "transfer out" in SEVIS. The current sponsor must enter the name and program number of the transfer sponsor and the effective date of transfer. The "transfer out" process gives the transfer sponsor access to the SEVIS record of the exchange visitor (and accompanying spouse and any dependent children).

(iii) The transfer sponsor shall initiate a "transfer in," issue a Form DS-2019 for the exchange visitor (an accompanying spouse and any dependent children), and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor, and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.



Answer

Bugs Bunny is ineligible for transfer to your institution because section 62.76(i)(v) states that the transfer must be validated within 30 days of effective date of the transfer release date. Since his program will not start until 60 days after the effective release date, Bugs is ineligible for transfer.



Incident #13

62.41 Change of Category

Charlie Brown completed a doctoral degree at your institution in the J-1 student category. He just completed three years of academic training as a post-doctoral fellow at your institution. His department now wants to offer him a non-tenure track teaching position.

Would Charlie Brown be eligible to change his J-1 exchange visitor category from “Student” to “Professor”?



62.41 Change of category

- (a) The Department of State may, in its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.
- (b) A request for change of category along with supporting justification must be submitted to the Department of State by the participant's sponsor. Upon Department of State approval the sponsor shall issue to the exchange visitor a duly executed Form DS-2019 reflecting such change of category and provide a notification copy of such form to the Department of State.
- (c) Requests for change of category from research scholar to student will be evaluated recognizing the fact that, in some cases, research skills can be substantially enhanced by doctoral study.
- (d) An exchange visitor who applies for a change of category pursuant to these regulations is considered to be maintaining lawful status during the pendency of the application.
- (e) An exchange visitor who applies for a change of category and who subsequently receives notice from the Department of State that the request has been denied is considered to be maintaining lawful status for an additional period of thirty days from the day of such notice, during which time the exchange visitor is expected to depart the country, or for a period of thirty days from expiration of the exchange visitors' Form DS-2019, whichever is later.



Answer

According to 62.41 Charlie Brown would be eligible to apply for a change of category from Student to Research Scholar. However, Responsible Officers should know that while the regulations allow for such a change to be applied for, these changes are rarely approved.



Incident #14

62.14(4)(h)(i) Insurance

Davey Crockett is a J-1 Research Scholar at your institution. He has insurance that meets all the requirements for participation as an exchange visitor except that his benefits do not include medical evacuation and repatriation of remains. Upon arrival you notify Davey that he must obtain medical evacuation and repatriation of remains benefits in order to continue to participate in his exchange visitor program. One month later Davey comes to see you to discuss extending his program. At that time you ask for proof that he has purchased the medical evacuation and repatriation of remains insurance. He informs you that he hasn't because he doesn't feel they are necessary.

Should you terminate Davey's exchange visitor program?



Sec. 62.14 Insurance

- (a) Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program. Minimum coverage shall provide:
- (1) Medical benefits of at least \$50,000 per accident or illness;
 - (2) Repatriation of remains in the amount of \$7,500;
 - (3) Expenses associated with the medical evacuation of the exchange visitor to his or her home country in the amount of \$10,000; and
 - (4) A deductible not to exceed \$500 per accident or illness.



Sec. 62.14 Insurance

- (h) An exchange visitor who willfully fails to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who makes a material misrepresentation to the sponsor concerning such coverage shall be deemed to be in violation of these regulations and shall be subject to termination as a participant.
- (i) A sponsor shall terminate an exchange visitor's participation in its program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent willfully fails to remain in compliance with this section.



Answer

According to 62.14(4)(h)(i) you must terminate Davey's J-1 Exchange Visitor Program. This regulation states that any exchange visitor who willfully fails to maintain the insurance coverage as required for participation shall be deemed to be in violation of status and subject to termination.



Incident #15

62.21(g) Short-Term Scholars (duration of participation)

Daffy Duck was issued a DS-2019 to participate in your J-1 Exchange Visitor program in the Short-Term scholar category conducting research in environmental water resources for six months. The research is going so well that your sponsoring department decides that they want Daffy to stay on for an additional six months.

Can you extend Daffy's short-term scholar program?



Sec. 62.21(g) Short-Term Scholars

- (e) *Cross-cultural activities and orientation.* Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing cross-cultural activities and orientation as set forth in § 62.8(d) and § 62.10(c) . However, sponsors are encouraged to provide such programs for short-term scholars whenever appropriate.
- (f) *Location of exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form DS-2019. A participant may also lecture or consult at institutions not listed on the Form DS-2019 if his or her Responsible Officer issues a written authorization of such activity. Such written authorization must be attached to the participant's Form DS-2019.
- (g) *Duration of participation.* The short-term scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed six months. Programs under this section are exempted from § 62.8(b) governing the minimum duration of a program. Extensions beyond the duration of participation are not permitted under this category.



Answer

The maximum length of stay for J-1 Short-Term scholar is six months according to 62.21.(g).

Therefore, Daffy is ineligible for a program extension.



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