

As the Fall Semester Gets Underway, Colleges and Universities Should Remind Nonimmigrant Students and Exchange Visitors of New Unlawful Presence Policy to be Implemented by USCIS Beginning August 9, 2018

August 9, 2018, the effective date of U.S. Citizenship and Immigration Services' ("USCIS") policy memorandum that dramatically changes the way USCIS will calculate unlawful presence for students and exchange visitors in F, J and M nonimmigrant status and their dependents, is just around the corner. As such, it is essential for Designated School Officials ("DSO") on college and university campuses to remind nonimmigrant students and exchange visitors of the upcoming policy change to ensure that they do not violate it and jeopardize their stay in the U.S.

Under current USCIS policy, individuals who enter the U.S. in F, J or M status for the duration of their studies and practical training ("Duration of Status" or "D/S") do not automatically accrue unlawful presence if they overstay in the U.S. or violate their status. Instead, unlawful presence only accrues when the Department of Homeland Security ("DHS") issues a formal finding of a status violation while processing a request for another immigration benefit (e.g., F visa student seeks a change of status to H-1B) or an immigration judge orders the individual be excluded, deported or removed from the U.S. In just a few days, this is all going to change.

Effective August 9, 2018, under the new USCIS policy, F, J and M nonimmigrants and their dependents will start accruing unlawful presence as follows:

- F, J and M nonimmigrants who fail to maintain their status BEFORE August 9, 2018, will start accruing unlawful presence on August 9, 2018 or on the earliest of any of the following: (1) the day after DHS denied the request for an immigration benefit, if DHS made a formal finding that the individual violated his or her nonimmigrant status while processing a request for another immigration benefit; (2) the day after the Form I-94 arrival/departure record expired if the individual was admitted until a date certain; or (3) the day after an immigration judge or the Board of Immigration Appeals ("BIA") ordered the individual excluded, deported or removed.
- F, J and M nonimmigrants who fail to maintain their status ON OR AFTER August 9, 2018, will now begin accruing unlawful presence on the earliest of any of the following: (1) the day after the individual no longer pursues the course of study or the authorized activity, or the day after the individual engages in an unauthorized activity; (2) the day after the individual completes the course of study or program (including authorized practical training plus any authorized grace period); (3) the day after the Form I-94 expired if the individual was admitted until a date certain; or (4) the day after an immigration judge or the BIA ordered the individual excluded, deported or removed.

Individuals who violate this policy could be subject to a 3-year, 10-year or permanent bar from admission to the U.S. depending on how much unlawful presence was accrued before they departed the U.S. In addition, individuals who are subject to such a bar are generally not eligible to apply for a visa, admission or adjustment of status to permanent residence unless they are eligible for a waiver of inadmissibility or another form of relief.

Since the new policy drastically accelerates when F, J and M nonimmigrants could accrue unlawful presence, we recommend that DSOs remind nonimmigrant students and exchange visitors of this upcoming change and serve as a continued resource by providing guidance on what activities could possibly trigger the accrual of unlawful presence and what is permissible in order to maintain status in the U.S. DSOs should also advise students to act carefully and vigilantly in maintaining their status in the U.S. and to not engage in activities that could be considered unauthorized.

If you have any questions, please contact [Joanna Silver](#), or any other member of our [Immigration Practice Group](#) or [Higher Education Practice Group](#) or the attorney in our firm with whom you are regularly in contact.



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