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Validity of Student Visas Subsequent to a Break in Studies

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TO ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE

SUBJECT: VALIDITY OF STUDENT VISAS SUBSEQUENT TO A BREAK IN STUDIES

1. Summary: This message is to clarify the issue of whether a F-1 or M-1 visa remains valid after a student has a break in studies longer than five months. There are two circumstances where a student's visa is automatically invalidated after such a lengthy break.

Students who are not studying but remain in the United States

2. An individual admitted in F-1 or M-1 status to study in the United States who is transferring between schools or programs is no longer regarded to be in student status if classes are not resumed within five months of the date of transferring out of the previous school or within five months of the date of program completion, whichever is applicable. No formal finding of loss of status needs to be made. In order for that student to restore lawful status, he or she must apply for reinstatement of student status with the Bureau of Citizenship and Immigration Services (USCIS). (A student may pursue studies while reinstatement is pending. See 8 CFR 214.2(f)(16)(i)(C) and 8 CFR 214.2(m)(16)(i)(C).)

3. USCIS has the option to approve or deny reinstatement of student status. If student status is restored, then the student's F-1 or M-1 visa remains valid (assuming that the visa has not expired). However, if the student is denied reinstatement, then the student is held to have lost F-1/M-1 status at that point. Any valid student visa that was in the student's possession would be invalidated per INA 222(g). Because the student is considered to be out-of-status from the time that reinstatement is denied, the student must immediately depart the United States.

4. There is no bar for a student who was denied

reinstatement from applying for and receiving another student visa, but consular officers should review the circumstances surrounding why the student ceased full-time study and lost status in the first place, including any actual status violation, in determining whether the applicant is a bona fide student at the time of application.

Students who depart the United States while in valid student status

5. Students who are enrolled in schools in the United States will often take a break from studies and return home for a semester or more. When a student has been out of the country for more than five months, the student's F-1 or M-1 visa would be considered to be invalid under 22 CFR 41.122(h)(3).

6. Under DHS regulations (8 CFR 214.2(f) (4)), an F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for study upon presentation of a valid I-20. After an absence of more than five months, an alien is no longer admissible as a continuing student. Under 22 CFR 41.122(h)(3), an immigration officer is authorized to physically cancel a nonimmigrant visa of an alien who appears to be inadmissible. Because a student who has been out longer than five months can be found inadmissible, that student's F-1 or M-1 visa is subject to cancellation and should not be used, even though it remains valid on its face.

A student who wishes to resume study in the United States must obtain a new visa. In order to apply, the student should either obtain a new I-20 from the school or verify that his/her previous I-20 remains valid and SEVIS record is in active status before applying for a new F-1 or M-1 visa.

7. Students who have the approval of their schools to take an extended break from study must have their SEVIS record terminated for Authorized Withdrawal. When the student is ready to resume study, the school will issue the student a new initial Form I-20 with a new SEVIS number. These students must pay the SEVIS I-901 fee.

8. Some students depart the United States for extended periods of time for activities related to

their course of study, such as field research. Schools are expected to maintain those students in an active SEVIS status. Since these students continue to maintain their student status while overseas, their F-1 visas are not considered to be invalid after an absence of more than five months.

9. Travel.state.gov will be updated to reflect the above guidance. Posts may include a link to http://travel.state.gov/visa/temp/types/types_1268.html on their web sites for the latest guidance.

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