

To “B” or Not To “B”?

Wait! What is the Question?



2014 Spring Immigration Workshop

Introduction



- ❧ Mary Louton – New England Conservatory
- ❧ Sal Mazzone – Northeastern University
- ❧ Sara Sanford – Brown University
- ❧ Sandra Torres – University of Massachusetts Medical School

Agenda



- ❧ General Information
- ❧ Academic Purposes
- ❧ Music & Artists
- ❧ Clinical Setting
- ❧ Short-term Programs
- ❧ Case Study & Questions

B Classification



- ❧ INA § 101(a)(15)(B)]
- ❧ Individual eligible for B classification is:
 - ❧ an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

B for Business



- ❧ 22 CFR § 43.31(b)(1)
 - ❧ The term "business," as used in INA [101\(a\)\(15\)\(B\)](#), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire.

- ❧ Does NOT constitute employment.

Institutional Policy



- ❧ Varied policies and knowledge across institution.
- ❧ Liability issues
- ❧ Even further limit opportunities for international students and scholars.
- ❧ Varied policies across U.S. institutions
 - ❧ Having to justify policy.

Academic Setting



- ❧ 9 FAM 43.31 Notes N8
 - ❧ (3) Consult with business associates;
 - ❧ (5) Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
 - ❧ (6) Undertake independent research.

Academic Setting



- ❧ Independent Research: What is the line between independent and collaborative research
- ❧ Meetings for scientific, research, educational purpose : no “productive” work ; no income deriving from this work
- ❧ Some types of training: classroom or lab observation?

Academic Setting



- ❧ Activity as Lecturer or Speaker is permitted: no salary or income allowed other than honorarium.
- ❧ Disbursement of honoraria are limited to:
 - ❧ Activities lasting no more than nine days at any single institution
 - ❧ Honoraria payment cannot exceed a count of more than five institutions over the last six months.
 - ❧ Honoraria are for services conducted for the benefit of the institution (no productive work)

Academic Setting



- ❧ Alternatives
 - ❧ B-1 or J-1?
 - ❧ B in lieu of H-1
- ❧ Institutions should judge these options very carefully as they are considered “high risk”.

Musicians & Artists



- ❧ Usual Suspects
 - ❧ Campus Visits
 - ❧ Attend concerts and performances
 - ❧ Tourism with a class on the side through Continuing Education Department

Musicians & Artists



- ❧ Little Wacky
 - ❧ Auditions
 - ❧ Tourism with a master class on the side through College
 - ❧ Tourism with a private lesson or two
 - ❧ Unpaid Performances
 - ❧ Summer programs not offering a F or M
- ❧ Paid Performances – O-1 or P Artist Visa



Musicians & Artists

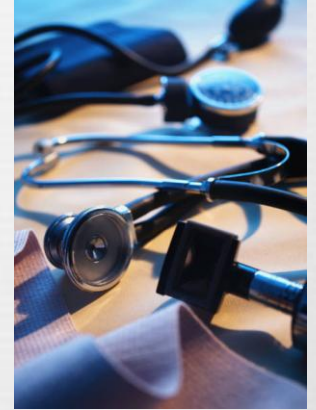


What to do with students who have left the US for an extended period but still need to finish a few degree requirements?

- ∞ Recitals
- ∞ Dissertation
- ∞ Exams

Common practice has been to recommend the B1 visa; however this past year, CBP has stopped a number of individuals requiring them to have an F1 instead. Conundrum: Do not qualify for the F1, potentially do not qualify for the B1.

Clinical Setting



- ❧ B-1 in Clinical Setting
 - ❧ Very limited use
 - ❧ No patient contact, except for “medical clerkship”
 - ❧ No compensation
 - ❧ Distinction between international medical graduates (IMG) and international medical students.

Clinical Setting



- ❧ Medical Clerkships/Electives
 - ❧ N10.4-1 Medical: applies only to international medical *students*.
 - ❧ Allows participation a medical elective that “affords practical experience and instruction in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school’s hospital as an approved part of the student’s foreign medical training.”
 - ❧ Up to a medical school to determine whether internal policy supports actual patient contact.
 - ❧ Business practice: elective acceptance; B-1 invitation letter, CBP letter, I-94 review

Clinical Setting



❧ Clinical Observations

- ❧ 9 FAM 41.31 N104-2 Business or other Professional or Vocational Activities
- ❧ Allow medical professionals to enter in B-1 “exclusively to observe the conduct of business or professional activity”. Absolutely no patient contact.
- ❧ Any practical experience through on-the-job training or clerkship must qualify under H, L or J status.

Clinical Setting



Common Scenarios

- Common Scenarios
 - International partnership with hospital or medical/nursing/dental school abroad for short-term medical observerships.
 - Make sure restriction against: practical experience, patient contact, and payment to or on their behalf will be formalized in agreement or MOU.
 - Individual IMG often already in US in B-1 studying for USMLE and wants to engage in:
 - Observership at the hospital. See hospital policy.
 - “Volunteer” activities in research department/lab.

Non-traditional Programs



- ❧ Summer Programs
 - ❧ Short-term
 - ❧ High-school students

- ❧ Non-degree
 - ❧ No degree objective or certification

- ❧ Non-U.S. degree program with “modules” or classes on U.S. campus

- ❧ Others?

Non-traditional Programs



- ↻ DHS vs DOS interpretations
- ↻ Institutional policy
 - ↻ Liability
 - ↻ How advertise?
 - ↻ Explicitly ban B status enrollment?

Case Studies



- ∞ 10 min – Discuss case studies
- ∞ Report to rest of audience

Evaluations



- ❧ Don't forget to fill out the evaluation form!
- ❧ Evaluations inform future GRAC and Region XI events.
- ❧ Drop off at end of day.

Question & Answer



❧ Any questions?

❧ Any examples of what worked for your institution and why?

❧ THANK YOU!!