

THINGS JUST GOT GREY: TRICKY CASES FROM THE LISTSERV



Chair:

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Presenters:

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Format of Session

- Presenters introduce a case study.
- Small Group Discussion of how you might approach this at your school. Use resource guides provided.
- Presenters discuss resources and options.

Topics Today

- Work Authorization Questions
- Maintaining Status Questions
- Travel Questions



Work Authorizations: Case 1

OPT and Summer Term

I have three inquiries from students who will finish their degrees in summer term and want to do full time pre-completion OPT. At our institution we don't count summer as an official term, even if students choose to take courses-- only fall/spring counts as regular academic terms when school is in session and students are required to enroll. In addition to enrollment requirements, we apply this concept to Reduced Course Loads (not required), counting time toward being eligible for practical training benefits (doesn't count), etc.

Knowing that the students will complete their degrees at the end of summer term, authorizing full time pre-completion OPT seems off, since it is their last period of academic work. However since school is not "in session" during summer term, maybe the student does have a right to full time pre-completion OPT. After all, students may be working in on-campus positions during this time on a full-time basis and we probably wouldn't know about it. Can a student do full time pre-completion OPT during summer if summer is not a required term, but it is their last session of study?

Resources

- **214.2(f)(10)(ii)**
- (ii) *Optional practical training* --
- **214.2(f)(10)(ii)(A)**
- (A) *General*. Consistent with the application and approval process in paragraph (f)(11) of this section, a student may apply to USCIS for authorization for temporary employment for optional practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I-766. **A student may be granted authorization to engage in temporary employment for optional practical training:**
- **214.2(f)(10)(ii)(A)(1)**
- (1) During the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration **and intends to register for the next term or session;**
- **214.2(f)(10)(ii)(A)(2)**
- (2) While school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or....

Options

- OPTION 1: Restrict OPT to 20 hours per week
 - Although we don't count the summer break as a time when school is in a required session, is taking courses/finishing degree work enough to make it "in session"?
 - Key concept- student must intend to enroll in next semester.
 - If student doesn't intend to enroll in next semester, and degree work is needed to complete, then we must count summer as "in session" – OPT restricted to 20 hours per week.
- OPTION 2: Recommend full time OPT
 - Summer is not a required academic term, so what if they *happen* to finish during that time period?
 - We don't count summer as a regular academic session for other purposes, is it inconsistent to make it "count" for this case?
- What are the implications for other types of employment? How do we monitor that?

Work Authorizations: Case 2

Post-Completion OPT and Not Passing Classes

I have a student who applied for post-completion OPT in November based on a December completion date. She appeared in my office yesterday (January) to let me know that she is enrolled full time for the spring semester because she did not complete all her degree requirements. Her OPT is still pending with USCIS but her I-20 completion date was 12/18/2013. Can I ask for her program end date to be changed in SEVIS to reflect a May graduation if she is able to withdraw her OPT application before it is adjudicated? Is this something I would do now as she is working on getting her OPT withdrawn?

Resources

SEVP Policy Guidance 1004-03, April 2010

What happens if a student (excluding those students who have completed all program requirements aside from thesis or equivalent) applies for post-completion OPT before his or her program end date and subsequently fails to complete the requirements for his or her program?

- The student should contact his or her DSO immediately for guidance.
- If the employment authorization application has not been adjudicated by USCIS, the student may withdraw the application by notifying the Service Center where the application was filed. The DSO should also withdraw the recommendation for OPT in SEVIS.
- If the employment authorization application has already been approved, the DSO should extend the student's program end date to the appropriate date. The student may work part time while enrolled in courses to complete the requirements for his or her program and full time during breaks and vacations. After successful completion of all the program requirements, the student may work full time.
- However, even though the student's program end date was extended, because the OPT was granted as post-completion OPT, the student is subject to the 90-day limitation on unemployment.
- SEVP strongly recommends that a student who may not be able to successfully complete all program requirements on time defer applying for post-completion OPT until after his or her program ends.

More Resources

Extension Regulations:

An F-1 student is eligible for extension of stay if: 8 C.F.R. § 214.2(f)(7)(iii)-(iv)

- **The student applies to the DSO for the extension prior to the program end date**
- The DSO actually updates the SEVIS record to reflect the extension before the program completion date;
- The student has "continually maintained status" and
- The DSO can certify that the delay in completion is "caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses"
- The list of academic reasons for delay found at 8 C.F.R. § 214.2(f)(7)(iii) is not an exclusive list; it is meant to give examples of acceptable reasons. DSOs do have discretion to interpret the term "compelling academic or medical reasons."
- The regulations go on to state that "delays caused by academic probation or suspension are not acceptable reasons for program extension."

Options

- Withdraw OPT and file a Reinstatement for failure to extend before program end date. Pros? Cons?
- Maintain OPT for less than 20 hours per week while classes are in session, full time after classes end; and not exceed unemployment time. Pros? Cons?

Work Authorizations: Case 3

Curricular Practical Training and 20hrs per week

We have a student who is completing a required internship on CPT during this semester for 15 hours per week. He is asking if he can take an on-campus job for 10 hours per week for extra income. Does the CPT count toward his 20 hours per week allowance or can he do both?

Resources

The Regulations: 214.2(f)(9)(i) *On-campus employment*

- On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school.
- Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program.
- Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the Federal Register, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the Federal Register document.
- An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status.
- Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section.
- An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents. In the case of a transfer in SEVIS, the student may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, an F-1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.

Resources

The Regulations: 214.2(f)(10)(i) Curricular Practical Training

- An F-1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum.
- Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school.
- Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training.
- Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training.
- A request for authorization for curricular practical training must be made to the DSO.
- A student may begin curricular practical training only after receiving his or her Form I-20 with the DSO endorsement.

Resources

SEVP Weighs In

http://www.ice.gov/sevis/employment/faq_f_on1.htm

- **1.13. May an F-1 student work on campus while participating in OPT or CPT?** Yes. An F-1 student working on-campus may participate in CPT or in pre-completion OPT before the program end date. The F-1 student's total work hours for each type of work may not exceed 20 hours while school is in session. The F-1 student may work full-time during those periods when school is not in session or during the student's annual break. In this context, the F-1 student must remember that the primary purpose for being in the United States and way of maintaining status is enrollment in an SEVP-certified school.
- In 2012 an SEVP official at our Regional SIW verbally changed this response to say that CPT is an exception to this rule because it is an academic requirement. This does not exist in writing or official notices.
- **STUDY IN THE STATES:** says CPT doesn't count to 20 hrs

Options

- Higher Risk: the student takes both jobs because the regulations do not address the issue directly, and one interpretation exists which says CPT does not count because of its academic requirement and/or for-credit component.
- Lower Risk: the student stays under 20 hours per week in total.
- Time for an institutional policy!

Maintaining Status: Case 1

FT/PT in Final Semester if only 1 Semester

We have a student who studied here a few years ago, left. Now he is back to finish his degree, with a brand new I-20 and new F-1 status. He only needs one semester to graduate. Does he have to be enrolled full time? This is his final semester and he will graduate in May, 2014.

Resources

(6) *Full course of study* --

- **214.2(f)(6)(i)**
- (i) **General. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective.** A course of study at an institution not approved for attendance by foreign students as provided in §214.3(a)(3) does not satisfy this requirement. A "full course of study" as required by section 101(a)(15)(F)(i) of the Act means:
 - **214.2(f)(6)(i)(A)**
 - Post graduate study; DSO determines full time (be careful!)
 - **214.2(f)(6)(i)(B)**
 - Undergraduate: 12 credits per semester
 - **214.2(f)(6)(i)(C)**
 - Associates degree: 12 clock hours
 - **214.2(f)(6)(i)(D)**
 - Other programs: at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or
 - **214.2(f)(6)(i)(E)**
 - School-age: the minimum number of hours per week needed to make normal progress toward completion.

Resources

- Last academic semester

Regulations: 214.2(f)(6)(iii)(C)

(C) *Completion of course of study.* The DSO may authorize a reduced course load in the student's final term, semester, or session if fewer courses are needed to complete the course of study.

SEVP Online SEVIS Training: <https://www.ice.gov/exec/training/login.asp>

“Students authorized by the school for a partial course load in their final session are automatically considered full-full time students. SEVIS authorization is optional...”

Download text:

http://www.nafsa.org/Resource_Library_Assets/Regulatory_Information/SEVP_Training_for_DSOs_Course_Text/

Legacy INS Operations Instruction 214.2(f)(10)(i) counted periods of authorized RCL counting toward meeting one academic year of full time enrollment requirement for Practical Training eligibility purposes: *“Students who are taking a less than full course of study on the advice of the designated school official are considered in status and are not precluded from participation in practical training if they are also otherwise eligible.”* However, DHS has not spoken on this topic.

CAN THIS SAME CONCEPT APPLY?

Options

- OPTION 1:
 - Issue I-20 for length of time needed to complete program, and authorize RCL to complete course of study in final term.
 - If the objective is to complete the degree, and this is achieved with RCL authorization, register student as usual and consider the student to be full time and maintaining status.
 - This assumes the program itself is considered full time and eligible for I-20 issuance.
- OPTION 2:
 - Don't issue I-20 unless student registers for minimum full time definition- if the workload to be completed is not full time, the student's program of study is not I-20-eligible.
- Whichever you choose, be consistent!
- Consider push-back from academic departments.

Maintaining Status: Case 2

SEVIS Transfers and the DMV

It's November 26. I am working with a student who will transfer to my institution in Spring 2014. He was attending a language school until September, and is now in between schools. I have already issued him a transfer I-20 and he is in legal status. This leads me to a couple of questions:

How much before the start of the academic term can I register his SEVIS record (assuming that he goes ahead and registers for classes)? Do I have to wait until 30 days before the start of classes? Or until the start of the semester?

He is asking for assistance in applying for a driver license, and I'm not 100% sure what to tell him. I am thinking that he is probably not eligible at this point, because his SEVIS record is not yet active at my institution. If he wants to try and apply for the driver license before I register his SEVIS record, do you think that a letter of explanation from me might make a difference? We are in the state of Connecticut.

Resources

The Regulations: 214.2(f)(8)(i) School Transfer

- A student who is maintaining status may transfer to another Service approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section.
- However, an F-1 student is not permitted to remain in the United States when transferring between schools or programs unless the student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I-20, whichever is earlier.
- In the case of an F-1 student authorized to engage in post-completion optional practical training (OPT), the student must be able resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier.
- An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section, or, in the alternative, may depart the country and return as an initial entry in a new F-1 nonimmigrant status.

Resources

The Regulations: 214.2(f)(8) School Transfer

- (f)(8)(ii) Transfer Procedure: To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 A-B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.
- (f)(8)(ii)(C) SEVIS school to SEVIS school: To transfer from a SEVIS school to a SEVIS school the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as a "transfer out" and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date.
- As of the release date specified by the current DSO, the transfer school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The current school conveys authority and responsibility over that student to the transfer school, and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the current DSO after the release date has been reached.
- After the release date, the transfer DSO must complete the transfer of the student's record in SEVIS and may issue a SEVIS Form I-20. The student is then required to contact the DSO at the transfer school **within 15 days of the program start date** listed on the SEVIS Form I-20. **Upon notification that the student is enrolled in classes**, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. **The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by §214.3(g)(3)(iii).**

Resources

- NAFSA State Rep
- Local RMV/DMV

<p>Scholar Reg Ombuds Person 14-16</p>  <p>Susan C. Ellison Director, Office of Visa and Immigration Services Dartmouth College 63 South Main St., Ste. 303 Hanover, NH 03755 p: 603-646-3474 f: 603-646-1616 Susan.C.Ellison@Dartmouth.edu</p>	<p>Connecticut State Rep 13-15</p>  <p>Nicole Kurker-Stewart Assistant Director for Int'l Students & Programs Office of Multicultural & Global Education Quinnipiac University 275 Mount Carmel Ave. Hamden, CT 06518 p: 203-582-8729 f: 203-582-8796 nicole.kurker-stewart@quinnipiac.edu</p>
<p>Maine State Rep 14-16</p>  <p>Orlina Boteva Assistant Director of Study Abroad Office of Int'l Programs University of Maine 5782 Winslow Hall, Rm 100 Orono ME 04469 p: 207-581-1509 f: 207-581-2920 orlina.boteva@maine.edu</p>	<p>Eastern Massachusetts Rep – 12-14</p>  <p>Tara Clark Assistant Director of Immigration Appointments & HR Operations The Broad Institute 7 Cambridge Center Cambridge, MA 02142 p: 617-714-7161 f: 617-714-8993 taramac@broadinstitute.org</p>
<p>Western Mass. State Rep 12-14</p>  <p>Scott Tayloe Director of Customized Faculty-Led Programs CISabroad 17 New South Street, #205 Northampton, MA 01060 p: 413-582-0407 f: 413-582-0327 stayloe@cisabroad.com</p>	<p>New Hampshire Rep 12-15</p>  <p>John Deziel Int'l Employee Specialist Int'l Faculty, Scholar, & Student Advisor Office of Int'l Students & Scholars University of New Hampshire Durham, NH 03824 p: 603-862-0086 john.deziel@unh.edu Johndeziel3000@gmail.com</p>
<p>Rhode Island Rep 13-15</p>  <p>Katie Gilbertson Director, Int'l Student Services Johnson & Wales University 8 Abbott Park Place Providence, RI 02903 p: 401-598-1787 f: 401-598-2267 kgilbertson@jwu.edu</p>	<p>Vermont State Rep 12-15</p>  <p>Emma Swift Assistant Director for Int'l Student Services Office of Int'l Education University of Vermont 633 Main Street, L/L B-162 Burlington, VT 05401 p: 802-656-4296 emma.swift@uvm.edu</p>

Options

The student is in the state of Connecticut, which will not issue a license if the program of study start date is in the future. This causes serious challenges for transfer students and often leaves them without a valid license between programs.

The DSO should not register the student's transfer until enrollment is confirmed; the SEVIS record status would not impact the CT DMV application.

Travel: Case 1

I-515A Issues

Preparing for the Christmas break, a student came into the office for a travel signature. Attached to his I-20 was a I-515 form that was issued to him on Sept. 2, 2013 with a departure date of Oct. 1, 2013. I am not sure what to advise this student or what I should do about the I-515 form now. Any advice will be greatly appreciated.

Resources

- **Regulation 3.10.6.1**
- The DSO should have received an email from SEVP at the time of the I-515A issuance. SEVP's goal is to send the e-mail within 24 hours of the nonimmigrant's temporary admission into the United States. SEVP strongly encourages the DSO to use this information to remind the nonimmigrant to submit the necessary documents within the 30-day response period for SEVP to make an appropriate admissibility determination.
- **SEVP Broadcast Message 1010-01A On Form I-515A Processing (July 14, 2011)**
- Any F or M nonimmigrant who receives temporary admission into the United States with a Form I-515A, "Notice to Student or Exchange Visitor," must comply with the 30-day submission deadline. Starting July 15, 2011, the Student and Exchange Visitor Program (SEVP) will terminate the Student and Exchange Visitor Information System (SEVIS) record status of any F or M nonimmigrant who does not comply with the Form I-515A directive within the 30-day response period. At the end of the 30-day response period, the nonimmigrant has two choices if the nonimmigrant has not complied with the Form I-515A:
 - Depart the United States immediately
 - File immediately for reinstatement with U.S. Citizenship and Immigration Services (USCIS)
- **An F or M nonimmigrant who does not comply with the terms of the Form I-515A is not legally present in the country once the date on the Form I-94 expires. The nonimmigrant must receive a revised or new Form I-94 from SEVP to remain in the United States.**

Options

- The DSO should check SEVIS and verify that the student's record is still in active status.
- The DSO should issue a new I-20 for the student and along with the I-515A mail immediately to SEVP. The DSO should also send an explanation to : sevis.i-515@dhs.gov with "Attention: Michael McKeever" in the subject line.
- If the student's status has been terminated and is no longer active due to the late I-515A, the DSO and student should go through the new initial I-20 process. The student may travel and check with their local U.S. Consulate if a new visa application is needed.
- Since the student plans to travel, reinstatement is not an option. Reinstatement is only an option if the student does not plan on traveling outside of the U.S. anytime in the near future.

Travel: Case 2

Visa Validity and Returning from LOA

Visa validity and returning from a LOA, particularly in cases where the SEVIS number has changed. It seems like this ALWAYS comes up on the listserv.

Resources

To avoid problems on reentry, the Department of State has recommended that "it is prudent for students to apply for new visas at an embassy or consulate abroad prior to traveling to the United States to return to their studies after an absence of more than five months that is not related to their course of study," even if a prior F-1 visa had not expired.

41.61 N17.4 (b)

<http://www.state.gov/documents/organization/87373.pdf>

The case of the missing reg! 41.122(h)(3) is referenced in an old memo (circa 2006) that mentions the 5 month rule. However! It appears that (h)(3) is no longer included in the reg.

<http://www.state.gov/documents/organization/87513.pdf>

No regulations have been found that refer visa validity to different SEVIS numbers, the terms of the student's absence, and/or reason of termination (e.g. Suspension).

Options

This all depends on the student and their situation!

Highest Risk: The student has a valid F-1 visa stamp and returns to the U.S. regardless of circumstances. The student should be advised there could be issues upon re-entry.

Higher Risk: The student has been out of the U.S. less than 5 months and has a valid visa stamp with a previous SEVIS ID. Their new I-20 that they plan to return to the U.S. with has a different SEVIS ID. The student returns to the U.S. with the old but valid F-1 visa stamp and the new initial I-20.

Lower Risk: The student checks with their local U.S. Consulate to see if a new visa application is required. If so, the U.S. Consulate will “cancel without prejudice” the old valid visa stamp and issue a new F-1 visa stamp.

Travel: Case 3

Traveling with Pets

We have a new student from Iran who was approved for an F-1 visa, and plans to enroll in February. This student is asking to bring her cat along with her when she travels to Boston. From what I can find, I don't think this is a problem, provided her cat is healthy and up to date on shots. Has anyone dealt with this before? What recommendations should I make to this student?

Resources and Options

Customs and Border Protection

- Review CBP brochure on Pets and Wildlife
- Check with state, county, and local authorities for additional restrictions that may be more strict than federal restrictions.
- Cats are subject to inspection at the port of entry and may be denied entry if they have evidence of an infectious disease that can be transmitted to humans. If a cat appears to be ill, further examination by a licensed veterinarian at the owner's expense might be required at the port of entry.
- Cats are not required to have proof of rabies vaccination for import into the U.S. However, some states require it, so check with state and local health authorities at your final destination.

What about the next time I have a tricky question?

- Regional Listserv is answered by GRAC members: regionxi@list.goabroad.com
- KCISSS Rep: Erin Gustafson
- RegBuds: Amy Daly Gardner and Susan Ellison

