

Student and Exchange Visitor Visa Update - April 2010

Reference Document: STATE 047061, 05/10

Summary

1. This cable provides an update to guidance provided for student and exchange visitor visa applications. We remind posts that student and exchange visitors should be provided visa appointments on a priority basis. Admission to a lesser-known academic institution is not in itself a reason for refusal, although all applicants should be able to explain their school choice and educational plan. We urge posts to report suspect schools. Summer Work and Travel program participants should return from their programs in time for the beginning of fall classes, even though DHS allows them a 30-day grace period before they have to depart the United States. This cable also provides clarification on flight training, study incidental to visits for pleasure, and SEVIS. End Summary.

Student and Exchange Visitor Visa Appointment Wait Times

2. Wait times for visa appointments are available to the public and should reflect Department guidance that students and exchange visitors take priority for visa appointments. Sometimes a backlog of appointments is unavoidable, but in those cases you should have a system in place to provide expedited appointments to students and exchange visitors.

Students and Lesser-known Programs

3. CA continues to receive complaints that some consular officers are unreceptive to applications from prospective community college students. This is at odds with CA policy, explained by A/S Jacobs in her July 2009 speech to the organization, Community Colleges for International Development [redacted].

4. Attendance at a lesser-known college, an English language program, or a community college is not, in itself, a reason for refusing a student visa applicant, per 9 FAM 41.61 N7.2. However, a student must overcome INA 214(b) and establish that he/she has a realistic plan for his/her education and return to their country. Whether a student seeks only English language study, a two-year degree, or initial attendance at a community college and then a transfer to a four-year institution, he or she should be able to articulate the reasons for choosing a particular program. Which school a student chose is not nearly as important as why he/she chose it.

5. The U.S. educational sector regularly creates new formats and packaging to keep their products in the public eye. Following the economic downturn, U.S. educational institutions have stepped up overseas recruiting efforts, especially in countries where the language of instruction is English or that have an increasing demand for educated citizens who are adept in English. U.S. educational institutions may be considered a "good buy" with the decline in the value of the dollar. In addition, the United

States may also be perceived to offer a level of institutional support that does not exist in other countries.

6. We encourage you to welcome community college or other university recruiters to brief your section on their schools and programs. An embassy's Public Diplomacy Educational Advising Center is also a valuable collaborator. Its staff is familiar with the local educational context and often has information about U.S. recruiters who may visit your post. You may wish to ensure your website has links to such USG sites as www.exchanges.state.gov, www.educationusa.state.gov www.ed.gov and educational association sites, such as www.communitycollegeusa.com, www.edupass.org, or www.iie.org.

Reporting Suspect Schools

7. Consular officers who uncover patterns of abuse or suspicious activity from a particular school should send that information to VO/F/P and FPP. We forward information from the field that sometimes leads ICE/SEVP to reevaluate a school's SEVIS status. Tips regarding suspect schools submitted by overseas posts have led to the decertification of several schools in the past year.

Summer Work and Travel Program Participant Timely Return

8. Many posts are now in the midst of their busy Summer Work Travel program (SWT) season. Please note that, as explained in 9 FAM 41.62 N8.6, the SWT program must end before the next school term begins. The law allows each J participant to remain in the United States for a 30-day grace period after the program ends, although they may not work during that period. Any validation studies addressing J overstays must take into account the permitted grace period.

9. On the other hand, 9 FAM 41.61 N4.12 states that "a participant is defined as a bona fide foreign post- secondary student in his or her own country currently enrolled in and actively pursuing a degree or a full-time course of study at an accredited academic institution, or as that status is defined by the alien's home country educational system."

10. As before, SWT applicants are not required to have a job placement at the time of their visa applications. However, it is reasonable, especially in the current economic climate, that applicants without job placements may have a more difficult time establishing their ability to support themselves during their programs, as well as their intent to return abroad after the program ends. One effective way to minimize potential SWT abuse is to verify job offers for SWT applicants who have them. Additional information about the types of employment permitted on SWT can be found on the ECA site at www.exchanges.state.gov/jexchanges/programs/swt.html

11. We encourage posts to work with U.S. sponsors, the local education ministry, and university officials to establish uniform SWT dates for each country. Engaging U.S. sponsors has the added advantage of encouraging engagement with the host government by the U.S. entity that can best explain many important aspects of the SWT program, such as why sponsors offer certain jobs, why the program costs what it does, and how the sponsors look out for the welfare of their clients during their programs in the United States.

Flight Training and Certification

12. Posts are familiar with flight trainees who receive I-20s and are eligible for M-1 visas, although on occasion certain others qualify for F-1 visas (the latter being participants in exchange programs that ECA is phasing out this year). On the other hand, if an applicant is attending flight simulator training that is short-term in duration and being done solely for recertification or maintaining existing certification, then a B-1 visa is appropriate. You will need to ensure there is no classroom instruction, only simulator and self-study. This also assumes that the applicant's employer is covering the simulator training costs, incidental costs, and that the applicant does not receive a salary or perform "labor" in the United States. In the case of long-term training, an I-20 is required and an M or, on occasion, F visa is appropriate. Please address questions on this and any other visa classification questions to your regional officer in VO/L/A.

Study Incidental to Visit vs. Principal Purpose of Admission

13. Several posts have raised instances in which U.S. institutions offer courses for foreign students that strain the definition of "study incidental to visit," particularly in the case of summer programs. In such cases, we remind posts that 9 FAM 41.31 N6.1 instructs you that "an alien desiring to come to the United States for one principal, and one or more incidental purposes, should be classified in accordance with the principal purpose." That means that posts need to make some findings as to what actually goes on in these courses. If the student plans to spend a week or more of full-time study (more than 18 hours per week) for academic credit or completion of an academic program of study in the United States, an F-1 or M-1 visa is appropriate.

14. Many of these summer programs, however, are marketing programs aimed at exposing high school students to a variety of subjects they might be interested in pursuing at the higher educational level rather than at providing students with any substantive academic instruction. Typically, the class instruction is often coupled with social and other activities. The fact that the courses are offered by an academic institution should cause you to look into the activity more closely, but it should not preclude B-2 classification of the activity if circumstances warrant it. Don't forget to annotate those visas, "STUDY INCIDENTAL TO VISIT-Form I-20 NOT REQUIRED."

15. If posts find applicants will be engaged in something other than a week or more of full-time study, and that the course is neither offered for academic credit, nor required for completion of an academic program of study, then the activity may be properly classifiable as B-1 as an educational convention or seminar.

SEVIS Report Changes

16. Until ICE/SEVP fields SEVIS II, officers will still need to rely on the SEVIS CCD reports. On occasion,

interviewing officers encounter applicants whose SEVIS records indicate some problem that cannot be resolved at post. [Redacted]. Need additional contact information? Go to <http://www.ice.gov/sevis/contact.htm>.