U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

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MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES

FROM: Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Requiring Change of Status from B to F-1 or M-1 Nonimmigrant Prior to Pursuing a Course of Study.

On April 12, 2002, an interim rule was published in the Federal Register (copy attached) that eliminates the ability of a B nonimmigrant (both B-1 visitors for business and B-2 visitors for pleasure) to begin a course of study at a United States school without first obtaining approval from the Immigration and Naturalization Service (Service) to change nonimmigrant status to that of either F-1 or M-1 student. The interim rule was effective upon publication.

Background and Digest of Regulatory Changes

For many years, Service regulations at 8 CFR 248.1(c) provided an accommodation for nonimmigrants who enrolled in a course of study prior to filing a change of nonimmigrant status application (Service Form I-539). The accommodation stipulated that a nonimmigrant was not ineligible to change nonimmigrant status to that of student solely because the nonimmigrant had already enrolled in a course of study.

While the above noted accommodation has been beneficial to many aliens, the terrorist attacks of last year highlighted the need to gain greater control over an alien's ability to change nonimmigrant status to that of full-time student. The interim rule, by eliminating the ability of a B-1 or B-2 nonimmigrant to enroll in a course of study prior to changing nonimmigrant status to that of F or M student, will allow the Service to fully review such requests. As noted in the supplementary information section of the interim rule, this change is consistent with the statutory language of the Immigration and Nationality Act at section 101(a)(15)(B) which specifically states that a B nonimmigrant is not a person coming to the United States for the purpose of study.

Supplemental Guidance

All Adjudications Officers must be aware of the above noted regulatory changes to parts 214.2(b) and 248.1(c) of 8 CFR. In particular, the new regulations stipulate that:

- The prohibition against beginning a course of study prior to obtaining Service approval of a change of nonimmigrant status request is limited to B-1 or B-2 nonimmigrants. The term "course of study" implies a focused program of classes, such as a full-time course load leading to a degree or, in the case of a vocational student, some type of certification. Casual, short-term classes that are not the primary purpose of the alien's presence in the United States, such as a single English language or crafts class, would not constitute a "course of study." Courses with more substance or that teach a potential vocation, such as flight training, would be considered part of a "course of study" and thus would require approval of a student status;

- An alien will be considered to be in violation of his or her B-1 or B-2 nonimmigrant status should the alien begin a course of study prior to changing status to that of F-1 or M-1 student pursuant to 8 CFR 248.1 [e new 8 CFR 214.2(b)(7)] and,

- An alien who files a change of status application on or after April 12, 2002, may not pursue a course of study unless the Service has approved the I-539 application for change to F-1 or M-1 student, and the district or service center director will deny the change of nonimmigrant status request filed on or after April 12, 2002, if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the I-539 [ee new 8 CFR 248.1(c)(3)]

When adjudicating an I-539 where the alien indicates a B-1 or B-2 admission and is requesting a change of nonimmigrant status to either F-1 or M-1 student, officers must ensure that the evidence submitted in support of the I-539 confirms that the alien has not begun a course of study. Evidence that supports the alien's claim may include, but is not limited to:

- A copy of the alien's Form I-20 that indicates the date the alien's course of study will begin.

- A letter or other documentation from the school, confirming the alien's acceptance into a course of study, and confirming that the alien has not begun the course of study.

Should the officer have any doubt as to the veracity of the alien's statements or documentation, a Request for Evidence may be issued that precisely outlines the deficiencies found in the submitted documentation. Offices may also contact the school's registrar office or the designated school official in order to determine whether the alien has or has not begun a course of study.

All Service Center Adjudications Officers are reminded to follow the National Standard Operating Procedures (SOP) for adjudicating I-539 extension of stay or change of nonimmigrant status requests for B nonimmigrants. The guidance outlined in this section is intended to supplement the information found in the SOP. Questions may be directed to Headquarters staff officers Katherine Harris or Craig Howie, through appropriate channels.

Attachment