



May 17, 2021

Tracy L. Renaud
Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, D.C. 20529-2140
VIA: Regulations.gov

**RE: DHS Docket No. USCIS-2021-0004
CIS No. 2684-21
RIN 1615-ZB87**

Dear Ms. Renaud:

I write today on behalf of NAFSA: Association of International Educators with respect to the notice published at [86 FR 20398 \(April 19, 2021\)](#), titled “Identifying Barriers Across Benefits and Services,” requesting public comments on how U. S. Citizenship and Immigration Services (USCIS) “can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits.” NAFSA is the world’s largest association of international education professionals with over 10,000 members. Many of our members are USCIS customers, while others work with international students, faculty, and researchers who are USCIS customers.

NAFSA offers specific suggestions that we believe will reduce barriers and burdens to accessing immigration benefits and services because the United States needs a well-functioning USCIS for international education to be successful. People we seek to attract and retain on campuses around the country need to be reassured that they are welcome in the United States. Our campuses and our communities play a role in that welcome, however, that falls flat if the “service” provided by USCIS is confusing, slow, expensive, and seemingly capricious. Attracting the best and the brightest from throughout the world contributes immeasurably to the country’s preeminence in academic research and scientific innovation. They contribute to our economy as NAFSA's latest analysis finds that international students studying at U.S. colleges and universities contributed \$38.7 billion and supported 415,996 jobs to the U.S. economy during the 2019-2020 academic year. Beyond it being in the nation’s best interest to improve access to immigration benefits and services, a nation of immigrants should make service a priority for those who seek to join us, whether for a short visit or as citizens.

USCIS should focus on the mission given to it by Congress when it was written into law - to provide service. USCIS must:

- prioritize providing efficient and fair service,
- use available resources wisely and effectively,
- act as a good steward of funds paid by those seeking service, and
- allow for reasonable flexibility that favors the assumption of and maintenance of legal immigration status when available.

Enhance Stakeholder Engagement and Inter-Agency Coordination

NAFSA appreciated the DHS Policy for Internal Information Exchange and Sharing, referred to as the “One DHS” memorandum, to further the mandate of open information exchange within DHS under former DHS Secretary Janet Napolitano. We encourage a one-government approach that would help lay the foundation for some of our overlapping USCIS-SEVP requests.

USCIS should continue to work closely with other DHS units such as ICE’s Student and Exchange Visitor Program (SEVP) and U.S. Customs and Border Protection (CBP), as well as with the Department of State (DOS), the Department of Labor (DOL), and other federal agencies and their component bureaus relating to all aspects of immigration benefits and programs to reduce confusion and to provide confidence to foreign students and scholars that each of the agencies’ policies are aligned and are recognized by each agency.

Restore the Homeland Security Academic Advisory Committee (HSAAC)

Work with DHS leadership to restore the Homeland Security Academic Advisory Council (HSAAC) (see <https://www.dhs.gov/homeland-security-academic-advisory-council-hsaac>). The council included members of the U.S. higher education community, as well as interagency representatives (the Departments of State, Education, and Justice). When the council and the subcommittees were active and held public meetings, it allowed DHS to regularly engage with U.S. higher education stakeholders on a range of relevant topics, including concerns related to international students. HSAAC should be reconstituted with the same structure as during the Obama administration, with a clear focus on higher education and international students.

Reestablish and Revitalize Stakeholder Engagement

Communicating with stakeholders about the agency’s policies and processes is essential and should be reestablished and revitalized to encourage input and collaboration. USCIS and its stakeholders and customers have benefitted greatly from engagement and effective communication in the past. Stakeholders and customers must understand the agency’s policies and processes, and especially changes to them, in order to access the agency’s

services effectively. The agency gains valuable information from stakeholders about trends and issues in adjudications and customer service.

Solicit Public Input on Policy Guidance

USCIS should immediately return to the practice of apprising stakeholders of changes to the USCIS Policy Manual and other policy documents such as memoranda, and of accepting feedback about such changes. USCIS should also immediately empower the USCIS Office of Public Engagement, which in the Obama administration was highly effective in communicating with stakeholders and coordinating stakeholder engagement, to perform these functions again.

Complete Development of USCIS Policy Manual Guidance on F and M Students

USCIS should add F and M student content to the USCIS Policy Manual. The F and M student guidance in the legacy INS Operations Instructions was never replaced when USCIS moved to the Adjudicator’s Field Manual (AFM), and guidance now continues to be unavailable in the USCIS Policy Manual. This content is important for transparency and will lead to better quality benefits requests from an educated public. As for all policy guidance, USCIS should seek and consider public feedback about this content.

Improve USCIS Processing Times

USCIS’s long processing times result in many burdens for its customers and appear to have led to problematic USCIS policies like the otherwise unnecessary “bridge application” policy (further discussed below). USCIS should prioritize predictable processing times and implement technological improvements to accomplish this. Reasonable and reliable processing times are critical for nonimmigrants and immigrants, their families, and employers, because they all rely on decisions made by USCIS to plan their lives and to ensure the maintenance of legal immigration status.

Expand Premium Processing Program

Continue expanding the “premium processing” program as authorized by INA 286(u)/8 USC 1356(u), amended by the Emergency Stopgap USCIS Stabilization Act of 2020, to include the fullest variety of benefit applications. This should include, but not be limited to, all applications for change of status and applications for an employment authorization document. Although paying the premium fee should not take the place of reducing processing times, its availability is important for time-sensitive applications and petitions.



Continue Progress Towards Online Filing and Documentation

NAFSA appreciates USCIS' recent deployment of Form I-765 online filing and is hopeful that it will be a user-friendly system that will result in efficiencies for both USCIS and customers. We urge USCIS to continue to invest the necessary resources to perfect the eProcessing system, and continue stakeholder outreach. This outreach is necessary so that NAFSA members may with confidence recommend online filing to students and scholars. USCIS should continue to expand online filing to include employer-filed petitions such as Form I-129 and Form I-140, and allow employers to manage these petitions through an account. Allowing employers to respond to REFs and NOIDS and withdraw petitions through an online account could provide benefits both for USCIS and for employers.

USCIS should also incorporate smart measures that developed out of COVID-19 flexibilities that make sense to maintain permanently. For example, ICE's SEVP is allowing schools to electronically send Forms I-20 to student email addresses listed in SEVIS. Emailing I-20s to students saves time and money as it reduces delays and other problems that arise when relying on paper-based mail. Furthermore, USCIS should routinely accept supporting documentation that is signed or verified electronically, especially when electronic versions or signing of those forms are permitted by other government entities.

Revise Form I-765 and the Online I-765 to Allow Filing by Students Temporarily Abroad

An instruction of Form I-765 states "You must file Form I-765 while in the United States." This physical presence requirement for filing is not required by law. Maintaining this requirement fails to recognize the ease and frequency of international travel among foreign students and other nonimmigrants in the U.S. Many students return home for school breaks and holidays and may travel to third countries to conduct field research or participate in conferences. The requirement also fails to recognize the timing issues many students face, given the narrow window for filing post-completion Optional Practical Training applications and long USCIS processing times. International students should be encouraged to maintain ties with their home countries and to seek experiences abroad that advance their study. Requiring in-country OPT work authorization filing is an unnecessary burden and should be eliminated. The implementation of the online Form I-765 further highlights that both the paper application process and this requirement to be in the U.S. when filing are outdated policies.

Prioritize Deferred Action for Childhood Arrivals (DACA) Adjudications

USCIS should prioritize expeditious processing of DACA renewals and new applications along with related work authorizations and travel documents, consistent with the Presidential

Memorandum of January 20, 2021 that directs the Secretary of Homeland Security to “take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.”

Withdraw the Proposed Rule to Eliminate Duration of Status for Foreign Students and Exchange Visitors (F and J Status)

DHS should withdraw its proposed rule titled *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media* published at 85 FR 60526 (September 25, 2020), and not pursue rule-making that would limit or eliminate D/S.

For decades, foreign students and exchange visitors have been granted immigration status that lasts for the time they are engaging in their studies and practical training or exchange program, known as duration of status or D/S. Alarming, on September 25, 2020, USCIS published a proposed rule to eliminate D/S for F students and their dependents, J exchange visitors and their dependents, and I media representatives. The D/S policy is necessary because the time for study or research can fluctuate given the changing goals and actions of the student or researcher. For example, prior to starting a degree program, a student may take full-time English language courses to improve proficiency or a student who begins studying at a community college may transfer to a 4-year institution. Providing ongoing immigration status – D/S – as long as the foreign student complies with the law reflects the reality of study. USCIS will be unable to timely adjudicate the filings that a change of D/S policy would generate. USCIS already struggles with long backlogs and delays. USCIS average processing times have increased by 46% over the past two fiscal years and 91% since fiscal year 2014. Ending D/S would exacerbate an existing problem by adding an enormous number of new extensions of status filings without accomplishing a goal that would warrant this policy change.

Streamline and Expand the Special Student Relief (SSR) Program

USCIS should work with other DHS components to streamline and expand the Special Student Relief (SSR) Program (established by 63 FR 31872 (June 10, 1998), which amended the following F-1 regulatory provisions: F-1 duration of status at 8 CFR 214.2(f)(5)(v); Full course of study at 8 CFR 214.2(f)(6)(i)(F); Employment eligibility at 8 CFR 214.2(f)(9)(i) and 8 CFR 214.2(f)(9)(ii)). USCIS, with the other DHS components, should:

- Clarify and Expand SSR. DHS should establish reduced course load authorization and employment as independent benefits under SSR; clarify that "emergent circumstances" covers both domestic and international emergencies of any kind; and unify the finding of emergent circumstances for F, M, and J students under the authority of the DHS secretary.

- Apply SSR during the COVID-19 pandemic and its aftermath. SSR regulations allow DHS to suspend or alter rules regarding F-1 and M-1 D/s, full course of study, and employment eligibility, for specific groups of students from parts of the world that are experiencing emergent circumstances. As a pandemic, COVID-19 qualifies as a “emergent circumstance,” therefore, it is appropriate to apply SSR to all F-1 and M-1 students for the duration of the emergency and its aftermath.
- Coordinate with DOS on SSR. DOS has similar authority to provide SSR for J-1 students but has not developed regulations. DHS should coordinate with DOS to establish a unified recognition of emergent circumstances.

Preserve Experiential Learning Opportunities Like Curricular and Optional Practical Training for Foreign Students

USCIS or any DHS component should not pursue regulations or policies to scale back or eliminate optional practical training (OPT) or curricular practical training (CPT), and should continue to pursue legal action to protect it. Experiential learning, curricular and optional practical training for foreign students, is a key component of U.S. higher education. Access to this opportunity attracts foreign students, and our competitor countries use their similar programs to attract students away from the United States. USCIS should, in collaboration with ICE and SEVP, issue an affirmative statement of the value of international students to the United States and the critical role of experiential learning programs like OPT is to the U.S. higher education experience.

Allow F-2 Spouses of F-1 Students to Obtain Employment Authorization and Study Full-Time

USCIS should coordinate with ICE and SEVP to revise current regulations to make U.S. higher education more attractive to students with spouses by allowing spouses to engage in a wide range of educational activities and employment that will allow them to maintain or develop educational and professional qualifications. This revision would focus on changing 8 CFR 214.2(f)(15)(i), which currently provides “The F-2 spouse and children of an F-1 student may not accept employment” and 8 CFR 214.2(f)(15)(ii), which limits F-2 spouses to part-time educational activities.

Revise Regulations and Policy Guidance to Allow Certain, Limited Educational Activities in B-1/B-2 and Other Nonimmigrant Statuses

Coordinate with ICE’s SEVP and the DOS to issue regulations or policy guidance allowing visitors (admitted with B-1/B-2 status) to participate in certain limited educational activities. Often foreign students abroad need only to return to the United States briefly in furtherance or completion of an academic program (e.g., return for a commencement ceremony or defend

a dissertation.) Also, many people who travel to the United States for cultural activities do not intend to enroll in a full course of study but would like to participate in short-term educational activities such as short English language training. These activities may not be sufficient to qualify for an F-1 visa and certainly should not require an F-1 visa. Revising the B-1/B-2 visa regulations or issuing policy guidance explicitly allowing a wider range of educational activities would better facilitate these circumstances.

Revise Regulations to Expand the Filing Window for Post-Completion Optional Practical Training

Coordinate with SEVP to revise the provision at 8 CFR 214.2(f)(11)(i)(B)(2) that currently requires students to file an application for post completion OPT “within 30 days of the date the DSO enters the recommendation into . . . SEVIS,” which unnecessarily locks the OPT filing window to an unchangeable date in the SEVIS database. There are better ways to determine that a DSO’s recommendation is still valid. For example, a provision that allows students to file within 30 days of receiving the OPT Form I-20 from the DSO or allowing the DSO to update the authorization at any time in SEVIS, or even issuing an RFE for a newly signed Form I-20.

Revise the F-1 Reinstatement Regulations so that Inadvertent Unauthorized Employment is Not Disqualifying

Revise the “reinstatement to student status” provision at 8CFR214.2(f)(16)(i)(D) so that foreign students who inadvertently fall out of status are not barred from applying for reinstatement on the basis of any consequent inadvertent unauthorized employment.

Revise the F-1 Reinstatement Regulations to Include Reinstatement to Participate in Optional Practical Training

Revise the “reinstatement to student status” provision at 8CFR214.2(f)(16)(i)(C) to permit a student to apply for reinstatement for the purpose of applying for, or continue participating in, OPT following completion of studies. To do so, the regulation could be amended to read, “... Is currently pursuing, or intending to pursue, a full course of study . . . or is intending to apply for or resume authorized practical training following completion of studies in the immediate future.” This change to extend eligibility for reinstatement in order to apply for or restore OPT would be consistent with the regulations governing F-1 status because periods of OPT constitute part of a student’s “duration of status” under 8CFR 214.2(f)(5).

Promulgate Unlawful Presence Regulations Modeled After USCIS's 2009 Guidance

Promulgate unlawful presence regulations modeled after USCIS's May 6, 2009 policy memorandum, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*. This guidance has already governed interpretation of the unlawful presence provisions for over 20 years. Under this policy, individuals admitted for duration of status do not begin accruing unlawful presence until an immigration judge finds a status violation in the course of an immigration proceeding, or an immigration officer finds a violation of status in the course of an application for an immigration benefit. Promulgating regulations will provide the community with predictability and certainty that is necessary for the field to thrive.

Fully Restore and Expand the MAVNI Program

Coordinate with other DHS components and the U.S. Department of Defense to restore fully and expand the Military Accessions Vital to the National Interest (MAVNI) program to ensure proper background and security checks for program participants. DHS should promulgate clear regulations that protect the immigration status of individuals as they are processed through the program.

Provide for Maintenance of Nonimmigrant Status While Extension and Change of Status Applications Are Pending

USCIS should improve the Change of Status and Extension of Status processes and make them more predictable for foreign students, other applicants, and U.S. employers. Revise the regulations and USCIS policies pertaining to change of status at 8 CFR Part 248 and extension of stay at 8 CFR 214.2, to recognize explicitly that an individual who has timely-filed a non-frivolous application for change or extension of status maintains nonimmigrant status if the application remains pending beyond the applicant or beneficiary's period of admission that was current at the time the application was filed.

Rescind Policy That Requires Unnecessary "Bridge" Applications When Changing to F, M, or J Nonimmigrant Status

USCIS should return to the longstanding precedent policy of approving change of status applications to F, M, or J status for nonimmigrants if the program start date (on the Form I-20 or DS-2019 provided by the U.S. institution or program) is within 30 days of the expiration of the applicant's status at the time the change of status was filed. Under guidance published on uscis.gov titled *Changing to a Nonimmigrant F or M Student Status*, USCIS denies applications to change status to the F-1 student classification when the prospective student's SEVIS program start date has been deferred to a date that is more than 30 days

beyond the expiration of the nonimmigrant status from which the student is applying. This policy requires the prospective student to file a “bridge” application to extend the existing status to cover the time period until the new later (deferred) SEVIS start date.

The “bridge” filing requirement departs from longstanding precedent, in which USCIS regularly approved change of status applications as long as the program start date of the Form I-20 originally submitted in support of the change of status application had been within 30 days of the expiration date of the applicant's status at the time the change of status application was filed. At most, USCIS would ask applicants to submit a copy of a new Form I-20 that reflected a deferred start date, to document the fact that the student remained eligible for F-1 status at the time of adjudication. The complexities of bridge application practice, which are often inevitable because of long USCIS adjudication times, turn what should be a routine application into a confusing, multi-step process that these students must navigate on their own, or, more properly, with expensive legal counsel. For USCIS, this adds additional, unnecessary filings to the already backlogged system.

Allow Visitors (B-1 and B-2 status), and the Dependents of Foreign Students (F-2 status) to Begin Full-Time Study Immediately Upon Filing an Application for Change of Status

Coordinate with U.S. Immigration and Customs Enforcement (ICE) to revise 8 CFR 214.2(b)(7), 8 CFR 248.1(c)(3), and 8 CFR 214.2(f)(15)(ii), to allow nonimmigrants in B visitor classification or classification as an F-2 dependent of an F-1 student, who have filed a change of status to F-1, M-1, or J-1 student, to begin studying full-time upon filing the change of status application. Prior to creation of the SEVIS database, there was no coordinated way to track nonimmigrants seeking to change status to F-1. However, today, U.S. colleges and universities are required to create SEVIS records for nonimmigrants who are admitted to their institutions and are seeking F-1 status. Allowing for study during the pendency of the change of status increases the ability of ICE to track nonimmigrants and eliminates an unnecessary delay in the process of beginning study in the United States.

Eliminate the Practice of Searching for “Preconceived Intent” in Change of Status Applications

Accurately judging possible “preconceived intent” in change of status applicants is beyond the scope or abilities of adjudicators and may lead to improper denials. Individuals may have multiple intentions when applying for a visa and entering the United States, so applying the outdated DOS concept of “preconceived intent” in scrutinizing their applications is ineffective. Change of status applications should be granted as a matter of course, absent a showing of fraud. To do this, revise the USCIS Adjudicator’s Field Manual at AFM 30.3(c)(3)(D) Note 2, currently housed within the USCIS Policy Manual.

Establish a Trusted or Frequent Filer Program to Reduce the Burden on Employment-based Immigrant and Nonimmigrant Petition Filers

Create a “trusted or frequent filer” program providing expedited processing to applicants and petitioners who file frequently and are well-known to USCIS. This could provide additional efficiencies for USCIS while clearly benefitting customers.

Engage with Stakeholders to Ensure Equitable Implementation of the H-1B Cap Selection Final Rule

USCIS’s January 8, 2021 final rule titled *Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions*, published at 86 FR 1676, amends 8 CFR 214.2(h) to modify the H-1B cap-subject registration requirement "by generally first selecting registrations based on the highest Occupational Employment Statistics (OES) prevailing wage level that the proffered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code and area(s) of intended employment." Currently, cap-subject registrations received during the registration period are counted in a random selection process.

The final rule is subject to a court challenge arguing that this prioritization is not permitted under the Immigration and Nationality Act’s statutory language and, even if lawful, proposes a prioritization construct that would be damaging to the economic success of the nation. On February 4, 2021, DHS delayed the effective date of this rule to December 31, 2021. DHS should use this delay period to engage international students and higher education stakeholders to ensure, if implemented, the rule allows for prioritization that does not exclude early-career professionals who are recent foreign student graduates from U.S. colleges and universities.

Allow Provisional Adjustment of Status to Respond to Immigrant Visa Backlogs

Revise the regulations at 8 CFR 245.1(a) and (g) to allow filing of a provisional adjustment of status application for employment-based applicants facing immigrant visa backlogs. This allows would-be legal permanent residents and their families more certainty and flexibility to make life decisions (e.g., change employers and to travel abroad more freely) while waiting in the backlog.

Apply Policy and Operational Changes to Attract the Talented Entrepreneurs Who Want to Start and Grow Their Business in the United States

Through regulation or policy guidance, expand the ability for entrepreneur-graduates from U.S. institutions of higher education to form small or sole-owner business entities and allow them to self-petition for H-1B status and permanent residence.

Revise the H-1B Regulations to Eliminate Unnecessary Credential Evaluations

Revise 8 CFR 214.2(h)(4)(iii)(C) requiring a beneficiary of an H-1B petition to “hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree...,” to clarify that USCIS may make the determination if the degree and granting institution are widely recognized, the petitioner need not submit a professional credential evaluation. This change would help simplify the H-1B petition process and avoid the costs and burdens associated with obtaining a credential evaluation or responding to an unnecessary Request for Evidence (RFE) for a credential evaluation when the beneficiary’s degree is, for example, a Ph.D. from Cambridge University in the United Kingdom or McGill University in Canada.

Eliminate the In-Person Interview Required of Form I-485 Applicants for Adjustment of Status or Expand the Waiver Bases

Eliminate the regulation at 8 CFR 245.6 requiring in-person interviews of Form I-485 applicants for adjustment of status or expand the waiver guidelines found in the USCIS Policy Manual. Take a smart enforcement approach and conduct interviews only when additional information or evaluation is necessary so that the adjustment of status process is less burdensome and more efficient for both USCIS and its customers.

Expand the Interpretation of O-1 Extraordinary Ability

USCIS should consider expanding the interpretation of O-1 extraordinary ability to include individuals that have earned a doctoral degree from an accredited U.S. institution of higher education. Citing a study by Sowell, Zhang, Redd, & King (2008), the Council of Graduate schools noted that “Analysis of Baseline Program Data from the Ph.D. Completion Project, which examined both private and public institutions nationally, reports that the completion rate ten years after students begin their doctoral program remains low at 56.6%. Attainment of a doctoral degree itself should be recognized as an accomplishment that indicates extraordinary ability, and should be recognized as a factor in eligibility for O-1 classification.



Thank you for considering our recommendations to remove unnecessary barriers that impose burdens on foreign citizens from accessing immigration benefits and services. NAFSA welcomes the opportunity to further discuss our recommendations.

Sincerely,

Signature Redacted

Esther D. Brimmer, DPhil
Executive Director & CEO