Text of government letter published at 70 Interpreter Releases, Appendix II, page 1120 (August 23, 1993)

[NAFSA extract. The name of the student and the school have been removed]

HQ 214f-C

Lisa B. Enfield, Esq.
Executive Court of Jacaranda
8040 Peters Road
Suite H-107
Plantation, FL 33324

Dear Ms. Enfield:

Your letter dated January 11, 1993 requesting an advisory opinion on F-1 student practical training has been referred to me for reply. I understand from your letter that XXXXXX YYYYYYYY, an F-1 graduate student at the University of XXXXXXXXX, was denied a request for practical training because at the time of his request he had not been in student status for nine consecutive months as required pursuant to 8 CFR 214(f)(10).

In your letter you assert that 1) although Mr. YYYYYYYY attended classes full time, he fell out of status due to an erroneous completion date on his 1-20 which went unnoticed; 2) that be applied for and was granted reinstatement effective August 31, 1992; and 3) that his reinstatement erased the period during which he was out of status because reinstatement is considered *nunc pro tunc*. Finally, you suggest that a reinstatement may not even have been necessary in Mr. YYYYYYYY's case.

Your assertion that a reinstatement pursuant to 8 CFR 214.2(f)(16) is considered *nunc pro tunc* and that it erases the period during which the alien was in violation of status is incorrect. Second, the reinstatement process may be considered to consist of three steps: 1) an admission on the part of the alien that she/he has been in violation of status, 2) a legal determination by the Immigration and Naturalization Service (INS) that the alien is out of status, and 3) a judgement by INS that resumption of lawful status on the part of the alien is warranted. Such a resumption cannot be considered to have replaced the lawful status (now) for the unlawful status (then). Thus, an alien who is reinstated to nonimmigrant status cannot be considered to have continuously maintained status.

However, the question for purposes of practical training is not whether the alien has continuously maintained status since entry, but whether the nine months in lawful status were consecutively accumulated, regardless of when such time was accumulated. In Mr. YYYYYYYY's case, it appears that he was lawfully enrolled for at least nine consecutive months prior to violating

status and being reinstated and, therefore, would be eligible for practical training.

The effects of reinstatement for purposes of F-1 benefit eligibility notwithstanding, your assertion that a reinstatement may not have been necessary in Mr. YYYYYYYY's case is incorrect. Although an F-1 student is admitted to the United States for duration of status and is considered to be maintaining status if s/he is making normal progress towards completing a course of study, regulations at 8 CPR 214.2(f)(7)(iv) provide that a student who fails to complete his/her educational program within the time period written on the Form 1-20 A-B and fails to complete a program extension pursuant to 214.2(f)(7)(m) is considered to be in violation of status. According to the fact pattern presented in your letter, the erroneous completion date on Mr. YYYYYYYY's 1-20 went unnoticed and he exceeded the time period for completion of his educational program as indicated on the I-20. Under current operating procedures an F-1 student who violates status must either apply for reinstatement or leave the country and make a new admission (cf. November 4, 2992 cable on student status). However, a new admission does not "cure" previous violations of status for purposes of adjustment of status nor restore previous time in status for purposes of F-1 benefits.

Practical training benefits for F-1 students are the result of a long standing Service policy of granting employment authorization to students who need practical experience to round out their academic studies. As part of an ongoing review of the current F-1 regulations, the Service is examining the requirements for practical training eligibility. In addition, as part of a corresponding review of it's [sic] F-1 Operations Instructions, the Service intends to examine the question of whether a reinstatement should be required in cases where the error which caused the student to violate status is on the part of the institution enrolling the F-1 student.

I trust the above information is helpful.

Sincerely,

[signature]

Jacquelyn Bednarz
Chief, Nonimmigrant Branch
Adjudications