9 FAM 41.61
NOTES

(CT:VISA-1064; 10-09-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.61 N1 QUALIFYING FOR A STUDENT VISA (F-1/M-1)

(CT:VISA-1064; 10-09-2008)

a. An applicant applying for a student visa under INA 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) or INA 101(a)(15)(M) (8 U.S.C. 1101(a)(15)(M)) must meet the following requirements in order to qualify for a student visa:

   (1) Acceptance at a school (see 9 FAM 41.61 N2 and N3);

   (2) Possession of sufficient funds (see 9 FAM 41.61 N6);

   (3) Minimum preparation for course of study (see 9 FAM 41.61 N7); and

   (4) Present intent to leave the United States at conclusion of studies (see 9 FAM 41.61 N4).

b. If an applicant fails to meet one or more of the above criteria, he or she must be refused a visa under section 214(b) of the INA (8 U.S.C. 1231(b)).

9 FAM 41.61 N2 STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP)

9 FAM 41.61 N2.1 The Student and Exchange Visitor Program (SEVP)

(CT:VISA-1064; 10-09-2008)

a. In response to a requirement in the Illegal Immigration Reform and Immigrant Responsibility Act, in 1997, the Department of Homeland Security (DHS) initiated a pilot program to monitor the academic progress, movement, etc. of foreign students and exchange visitors from entry into the United States to departure. This program was formerly known as Coordinated Interagency Partnership Regulating International

Students (CIPRIS). The program has now been renamed as the Student and Exchange Visitor Program (SEVP).

b. SEVP manages the Student and Exchange Visitor Information System (SEVIS), a web-based system that tracks and monitors schools and programs, students, exchange visitors, and their dependents throughout the duration of approved participation within the U.S. education system. Through SEVIS, school and program administrators generate Form I-20, Certificate of Eligibility for Student Status - for Academic and Language Students, which certifies an applicant's eligibility for student or exchange visitor status. Posts can access the SEVIS record associated with the student through the Consular Consolidated Database (CCD) SEVIS report.

9 FAM 41.61 N2.2 SEVIS Record is Definitive Record

(CT:VISA-1064; 10-09-2008)

While applicants must still present a paper Form I-20 in order to qualify for a visa, the SEVIS record is the definitive record of student status and visa eligibility. Posts should always check an applicant's SEVIS status before issuing an F, M, or J visa, for two reasons. First, posts are required to verify that the SEVIS fee has been paid (see 9 FAM 41.61 N2.3.). Second, while presentation of a valid Form I-20 or Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, generally indicates that a student is entitled to apply for a visa, the SEVIS record, not the paper form, is the definitive record. Posts should ensure that part of their intake or interview procedure includes a routine check of SEVIS for all applicants.

9 FAM 41.61 N2.3 The SEVIS Fee

(CT:VISA-1064; 10-09-2008)

a. Students and exchange visitors should use Form I-901, Fee Remittance for Certain F, J and M Nonimmigrants, to pay the SEVIS fee. Form I-901 and filing instructions are available on SEVIS at the U.S. Immigration and Customs Enforcement website. Consular officers can verify SEVIS fee payment through the SEVIS CCD report. In rare circumstances, you may accept a paper fee receipt as proof of payment, but in most cases applicants who cannot demonstrate that they have paid the SEVIS fee should be refused under INA 221(g).

b. The SEVIS fee is generally a one-time fee for as long as the nonimmigrant maintains the status in which he or she was initially admitted. For an F or M student, the covered period generally extends from the time the student is granted F or M status to the time he or she falls out of status, changes status, or departs the United States for an

extended period of time. An F or M student will not be required to pay a new fee upon transfer to a new school; extension of stay; change in education level when obtaining a new visa for re-entry or program continuation; upon a temporary absence of less than five months; or upon a period of approved absence in which the student is engaged in overseas study as part of his/her U.S. educational program requirements. Additional details on the SEVIS fee can be found on the SEVP at the U.S. Immigration and Customs Enforcement website.

9 FAM 41.61 N3 THE FORM I-20

9 FAM 41.61 N3.1 Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-

(CT:VISA-1064; 10-09-2008)

a. A prospective nonimmigrant student must have a Form I-20 issued by an SEVP-certified school in order to become an F-1 or M-1 student. Only an SEVP-certified school can issue a Form I-20 to students that have been accepted for enrollment. It acts as proof of acceptance and contains the information that is needed to pay the SEVIS Form I-901 fee and/or apply for a visa or change of status and admission into the United States. The Form I-20 has the student's unique SEVIS identification (ID) number on the upper right hand side directly above the barcode. SEVIS ID numbers are an N followed by 9 digits. The Form I-20 without the barcode and the SEVIS ID number are obsolete and cannot be used.

b. An F-1 or M-1 visa may be issued only to an applicant who presents a properly completed and valid Form I-20 from the institution the student will attend. These forms are issued only in the United States by approved institutions to students who will pursue a full course of study. The Department of Homeland Security (DHS) has authorized schools to reproduce the forms locally. Consular officers should be aware, therefore, that the appearance of the forms might vary somewhat. Care must be taken, however, to see that locally reproduced forms are textually identical to the standard forms. The Form I-20-Ps are blue and issued only by schools participating in the SEVP program. The Form I-20-P also differs in Item 4 by containing only the selected program, not the menu of choices on the standard form.

9 FAM 41.61 N3.2 School Official Must Sign Form I-20

(CT:VISA-1064; 10-09-2008)

A certificate of eligibility must bear the original signature of a designated school official (DSO) certifying that:

(1) The student's application for admission has been fully reviewed and is approved;

(2) The student is financially able to pursue the proposed course of study;

(3) Page 1 of the Form I-20 was completed and verified to be accurate prior to signature; and

(4) If the student will be attending a public high school, the school indicates that the student has paid the unsubsidized cost of the education (see INA 214(m)) and the amount submitted by the student for that purpose.

9 FAM 41.61 N3.3 Action in Cases Where Form I-20 Information Is Missing

(CT:VISA-1064; 10-09-2008)

If the applicant submits a Form I-20 that does not contain all the required information, you must suspend action and require that the missing information be submitted.

9 FAM 41.61 N3.4 Suspension of Cases Involving Unrealizable Reporting Dates

(CT:VISA-1064; 10-09-2008)

a. Action on the application must be suspended if the program start date specified in the applicant's Form I-20 is already past or you believe that the applicant will be unable to meet that date. The officer should review the Consolidated Consular Database (CCD) to determine whether the sponsor has amended the SEVIS record to change the program start date. If this has not already been done, the applicant must request the sponsor enter a new program begin date in SEVIS that the applicant can meet. Alternatively, the school may provide a letter stating that the student will be enrolled even though the date specified in the original Form I-20 has not been or cannot be met.

b. Consular officers may issue an F-1 or M-1 visa to an exchange visitor at any time who is or has previously been admitted in F-1 status and is seeking a visa to continue participation in a student program, as long as the status of the alien’s SEVIS record does not reflect inactive status (as the student may have withdrawn or have been withdrawn from the program) or terminated status (that indicates that a designated school

official (DSO) has ended the program).

9 FAM 41.61 N3.5 Notation on Form I-20 by Superintendent of a School System

(CT:VISA-1064; 10-09-2008)

An Form I-20 issued by a school system must indicate the specific school within the system that the student will attend.

9 FAM 41.61 N3.6 Student Must Present Form I-20 at Port of Entry (POE)

(CT:VISA-1064; 10-09-2008)

a. At the time of admission to the United States, a student must present the entire Form I-20, properly and completely filled out and signed by the designated school official (DSO) and the student. Thus, after an F-1 or M-1 visa has been issued, you must return the completed Form I-20, together with all supporting financial evidence, to the alien for presentation to the U.S. immigration officer at the port of entry (POE). Upon the alien's arrival, the immigration officer will examine the documentation and return the financial evidence to the alien.

b. If the student is admitted, Department of Homeland Security (DHS) will return the Form I-20 to the student endorsed with an admission number. The student must safeguard the form at all times. If the student loses it, he or she must obtain a replacement copy from the designated school official.

9 FAM 41.61 N3.7 Inquiries to the Department or DHS Concerning the Status of a Form I-20

(CT:VISA-1064; 10-09-2008)

As a rule, posts should not request the Department or DHS to ask educational institutions whether a particular alien has been accepted or whether they have sent the required form to the applicant. Consular officers normally should avoid putting themselves or the Department in a position of interceding in this matter and should advise the applicant to communicate directly with the school. Cases involving special public relations or bilateral problems, however, may be submitted to the Department (CA/VO/F/P) Justification for the action requested must be included in the message.

9 FAM 41.61 N4 RESIDENCE ABROAD

9 FAM 41.61 N4.1 Residence Abroad Required

(CT:VISA-1064; 10-09-2008)

The INA requires that the applicant possess a residence in a foreign country he or she has no intention of abandoning. The regulations require that you be satisfied that the alien intends to depart upon termination of student status. Consequently, you must be satisfied that the applicant, at the time of visa application:

(1) Has a residence abroad;

(2) Has no immediate intention of abandoning that residence; and

(3) Intends to depart from the United States upon completion of the course of study.

9 FAM 41.61 N4.2 Context of Residence Abroad for Student Visas

(CT:VISA-1064; 10-09-2008)

a. The context of the residence abroad requirement for student visas inherently differs from the context for B visitor visas or other short-term visas. The statute clearly pre-supposes that the natural circumstances and conditions of being a student do not disqualify that applicant from obtaining a student visa. It is natural that the student does not possess ties of property, employment, family obligation, and continuity of life typical of B visa applicants. These ties are typically weakly held by student applicants, as the student is often single, unemployed, without property, and is at the stage in life of deciding and developing his or her future plans. Student visa adjudication is made more complex by the fact that students typically stay in the United States longer than do many other non-immigrant visitors. (See 9 FAM 41.11 N2.)

b. The residence abroad requirement for a student should therefore not be exclusively connected to "ties." You should focus on the student applicants' immediate intent. Another aspect to consider: students' typical youth often means they do not necessarily have a long-range plan, and hence are relatively less likely to have formed an intent to abandon their homes. Nonetheless, you must be satisfied at the time of application for a visa that an alien possesses the present intent to depart the United States at the conclusion of his or her studies. That this intention is subject to change or even likely to change is NOT a sufficient reason to deny a visa.

9 FAM 41.61 N4.3 Relationship of Education or

Training Sought to Existence of Ties Abroad

(CT:VISA-1064; 10-09-2008)

The fact that a student's proposed education or training would not appear to be useful in the homeland is not, in itself, a basis for refusing an F-1 or M-1 visa. This remains true if the applicant's proposed course of study seems to be impractical. For example, if a person from a developing country may wish to study nuclear engineering simply because he enjoys it, he may no more be denied a visa because there is no market for a nuclear engineer's skills in his homeland than he may be denied a visa for the study of philosophy or Greek simply because they do not lead to a specific vocation.

9 FAM 41.61 N4.4 Availability of Collateral Academic Education in the Applicant's Homeland

(CT:VISA-1064; 10-09-2008)

The fact that education or training similar to that which the applicant plans to undertake is apparently available in the home country is not in itself a basis for refusing a student visa. An applicant may legitimately seek to study in the United States for various reasons, including a higher standard of education or training. Furthermore, the desired education or training in the applicant's homeland may be only theoretically available; openings in local schools and institutions may be already filled or reserved for others.

9 FAM 41.61 N4.5 Returning Students

(CT:VISA-1064; 10-09-2008)

Some students have to apply for new visas if they go home or travel during their period of study. You should generally issue visas to returning students, unless circumstances have changed significantly from the time of previous issuance. Students should be encouraged to travel home during their studies in order to maintain ties to their country of origin. If students feel that they will encounter difficulties in seeking a new student visa or that they will not be issued a visa to continue their studies, they may be less inclined to leave the United States during their studies and hence may distance themselves from their family and homeland. Posts should facilitate the reissuance of student visas so that these students can travel freely back and forth between their homeland and the United States.

9 FAM 41.61 N5 KNOWLEDGE OF ENGLISH

9 FAM 41.61 N5.1 Notation on Form I-20

(CT:VISA-1064; 10-09-2008)

If the alien's Form I-20 indicates that proficiency in English is required for pursuing the selected course of study and that no arrangements have been made to overcome any English-language deficiency, you must determine whether the alien has the necessary proficiency. To this end, the officer must conduct the visa interview in English and may require the applicant to read aloud from an English-language book, periodical, or newspaper, and to restate in English in the applicant's own words what was read. The applicant may also be asked to read aloud and explain several of the conditions set forth in the Form I-20. A student must demonstrate English language proficiency only if an admitting institution has made English language ability a requirement for the intended course of study.

9 FAM 41.61 N5.2 Language Tests Given by Academic and Nonacademic Institutions

(CT:VISA-1064; 10-09-2008)

In the event that the applicant's language proficiency appears marginal, you may refer the applicant for language testing, although this should be a rare practice. Tests for this purpose will ordinarily be carried out by appropriate local groups, such as qualified host-country facilities. If the latter are used, you should be satisfied that the testing standards are sufficiently strict.

9 FAM 41.61 N5.3 Courses for Students Taught in a Language Other Than English in which the Student Is Proficient

(CT:VISA-1064; 10-09-2008)

Proficiency in English is not required of a student if the enrolling institution conducts the course in a language in which the alien is proficient.

9 FAM 41.61 N5.4 English as a Second Language (ESL)

(CT:VISA-1064; 10-09-2008)

The fact that an English as a Second Language (ESL) or other education program is available locally is not in itself grounds for refusing an applicant. Many students find language learning enhanced by living in the country where the language is spoken.

9 FAM 41.61 N6 ADEQUATE FINANCIAL RESOURCES

9 FAM 41.61 N6.1 Determining Financial Status of F-1 and M-1 Students

(CT:VISA-1064; 10-09-2008)

In most cases, the sponsoring school has also verified the availability of financial support before issuing the Form I-20, but schools may not be as well-versed in local documentation or cultural practices as posts may be; therefore, you should still ensure that the student has sufficient funds to successfully study in the United States without becoming a public charge.

9 FAM 41.61 N6.1-1 F-1 Student

(CT:VISA-1064; 10-09-2008)

The phrase "sufficient funds to cover expenses" referred to in 22 CFR 41.61(b)(1)(ii) means the applicant must establish the unlikelihood of either becoming a public charge as defined in INA 212(a)(4) or of resorting to unauthorized U.S. employment for financial support. An applicant must provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the entire period of anticipated study. This does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years. You must, however, establish, usually through credible documentary evidence, that the applicant has enough readily available funds to meet all expenses for the first year of study. You also must be satisfied that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources.

9 FAM 41.61 N6.1-2 M-1 Student

(CT:VISA-1064; 10-09-2008)

All applicants for M-1 visas must establish that they have immediately available to them funds or assurances of support necessary to pay all tuition and living costs for the entire period of intended stay. Additionally, consular officers are authorized, at their discretion, to require evidence of payment of round trip transportation in advance of the alien's travel to the United States.

9 FAM 41.61 N6.2 Funds From Source(s) Outside

the United States

(CT:VISA-1064; 10-09-2008)

Whenever an applicant indicates financial support from a source outside the United States (for example, from parents living in the country of origin), you must determine whether there are restrictions on the transfer of funds from the country concerned. If so, you must require acceptable evidence that these restrictions will not prevent the funds from being made available during the period of the applicant's projected stay in the United States.

9 FAM 41.61 N6.3 Affidavits of Support or Other Assurances by an Interested Party

(CT:VISA-1064; 10-09-2008)

Various factors are important in evaluating assurances of financial support by interested parties:

(1) Financial support to a student is not a mere formality to facilitate the applicant's entry into the United States, nor does it pertain only when the alien cannot otherwise provide adequate personal support. Rather, the sponsor must ensure that the applicant will not become a public charge or be compelled to take unauthorized employment while studying in the United States. This obligation commences when the alien enters the United States and continues until the alien's departure.

(2) You must resolve any doubt that the financial status of the person giving the assurance is sufficient to substantiate the assertion that financial support is available to the applicant

(3) You must also carefully evaluate the factors that would motivate a sponsor to honor a commitment of financial support. If the sponsor is a close relative of the applicant, there may be a greater probability that the commitment will be honored than if the sponsor is not a relative. Regardless of the relationship, you must be satisfied that the reasons prompting the offer of financial support make it likely the commitment will be fulfilled.

9 FAM 41.61 N6.4 Funds from Fellowships and Scholarships for F-1 Student

(CT:VISA-1064; 10-09-2008)

A college or university may arrange for a nonimmigrant student to engage in research projects, give lectures, or perform other academic functions as part of a fellowship, scholarship, or assistantship grant, provided the institution

certifies that the student will also pursue a full course of study.

9 FAM 41.61 N6.5 Post-Doctoral Research Grants for F-1 Student

(CT:VISA-1064; 10-09-2008)

An alien may be documented as an F-1 student for post-doctoral research even if the college or university provides compensation to the alien in the form of a grant.

9 FAM 41.61 N7 EDUCATIONAL QUALIFICATIONS FOR F-1 AND M-1 STUDENTS

9 FAM 41.61 N7.1 Consular Role In Determining Educational Qualifications

(CT:VISA-1064; 10-09-2008)

a. The Form I-20 is evidence that a school has accepted the applicant as a student. You should normally not go behind the Form I-20 to adjudicate the alien's qualifications as a student for that institution. If you have reason to believe that the applicant engaged in fraud or misrepresentation to garner acceptance into the school, then that information is an important factor to consider in determining if the applicant has a bona fide intent to engage in study in the United States.

b. You are not expected to assume the role of guidance counselor to determine whether an applicant for an F-1 or M-1 visa is qualified to pursue the desired course of study. You should, however, be alert to three specific factors in this regard:

   (1) The applicant has successfully completed a course of study equivalent to that normally required of a U.S. student seeking enrollment at the same level;

   (2) Cases in which an applicant has submitted forged or altered transcripts of previous or related study or training which the institution has accepted as valid; and

   (3) Cases in which an institution has accepted an applicant's alleged previous course of study or training as the equivalent of its normal requirements when, in fact, such is not the case.

c. SEVP also evaluates the qualifications of a school to issue Form I-20.

This process includes a determination as to whether the school is a bona fide, established institution of learning with possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses of study. Evaluation also often involves an on-site visit. If you have reason to question the authenticity of a school or exchange program, please contact the Public Liasion Division (CA/VO/F/P), the Office of Fraud Prevention Programs (CA/FPP), SEVP, and/or the ECA Compliance Unit. (See 9 FAM 41.61 N8.)

d. Many U.S. colleges and universities do not require foreign students to submit SAT scores, and not all schools require high grade point averages (GPAs) for admission. As a result, you may not require that all applicants provide SAT or ACT scores, or that all applicants have a certain grade point average. Any questions about admissions requirements may be directed to the designated school official (DSO) noted on the Form I-20.

9 FAM 41.61 N7.2 Community Colleges or Lesser-Known Schools

(CT:VISA-1064; 10-09-2008)

Consular officers may appropriately consider the usefulness of a degree from a community college or lesser-known university (or from any university) in the local context. Attendance, however, at a lesser-known college or university is not, in itself, a ground of ineligibility, and applicants cannot be refused a visa for that reason. The INA does not distinguish among schools qualifying for Form I-20 authorization based on size or recognition nor does SEVP. There is no legal difference between community colleges, English language schools, and four-year institutions in terms of their authorization to issue Form I-20. A student must establish that he/she has a plan for his/her education. Which school a student chose is not nearly as important as why he/she chose it.

9 FAM 41.61 N8 FRAUD, RELATED TO CERTIFICATES OF ELIGIBILITY

9 FAM 41.61 N8.1 Certificates of Eligibility Obtained Through Misrepresentation

(CT:VISA-1064; 10-09-2008)

Fraud, as it relates to F-1 and M-1 cases, often involves the submission of false records to institutions to secure a Form I-20. If this type of fraud is suspected, you must suspend action on the application and request the

issuing school to conduct a full review of the student's records to ensure that all documentation and information are correct. The institution should be contacted only when you have knowledge that the documentation is fraudulent or contains misrepresentations that may have misled the school to issue the certificate. You must give the specific reasons why a review of the student's application is appropriate and request the school to report its findings once the review has been concluded. Should the report confirm fraud or misrepresentation of a material fact on the part of the applicant, you must consider the applicability of ineligibility under INA 212(a)(6)(C). (Questions concerning an alien's ineligibility under INA 212(a)(6)(C) must be addressed to the Advisory Opinions Division of the Visa Office (CA/VO/L/A).)

9 FAM 41.61 N8.2 Irregularities and Unusual Patterns of Issuance of Certificates of Eligibility/Counterfeit Forms

(CT:VISA-1064; 10-09-2008)

Consular officers must inform ICE/SEVP and Consular Affair's Office of Fraud Prevention Programs (CA/FPP) of any case or cases in which there are perceptible irregularities or unusual patterns in the issuance of Forms I-20 by an institution, or where it is suspected that an applicant has a counterfeit form.

9 FAM 41.61 N9 FULL COURSE OF STUDY

9 FAM 41.61 N9.1 F-1 Academic Student

9 FAM 41.61 N9.1-1 General

(CT:VISA-1064; 10-09-2008)

a. Department of Homeland Security (DHS) regulations (8 CFR 214.2(f)(6)(i)) specify that "successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A 'full course of study' as required by section 101(a)(15)(F)(i) of the Act (8 U.S.C. 1101(a)(15)(F)(i)) means:

(1) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a designated school official (DSO) as a full course of study;

(2) Undergraduate study at a college or university, certified by a school official to consist of at least 12 semester or quarter hours of

instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(3) Study in a postsecondary language, liberal arts, fine arts, or other nonvocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:

(a) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or

(b) A school accredited by a nationally recognized accrediting body and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(4) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of 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

(5) Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

b. Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the Federal Register shall be deemed to be engaged in a 'full course of study' if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization." (See 9 FAM 41.61 N9.2.)

9 FAM 41.61 N9.1-2 Institution of Higher Learning

(CT:VISA-1064; 10-09-2008)

Under DHS regulations (8 CFR 214.2(f)(6)(ii)), "a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees." The DHS holds that schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities but are classifiable as M-1 schools.

9 FAM 41.61 N9.1-3 Reduced Course Load

(CT:VISA-1064; 10-09-2008)

The designated school official (DSO) may advise an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

9 FAM 41.61 N9.2 Short Term Programs

9 FAM 41.61 N9.2-1 B-2 Visa for Visitor Who Will Engage in a Short Course of Study

(CT:VISA-1064; 10-09-2008)

a. Aliens coming primarily for tourism but engaging also in a short course of study (less than 18 hours per week) are properly classified for B-2 visas. You should insert the following notation below the visa: "STUDY INCIDENTAL TO VISIT; Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-for Academic and Language Students NOT REQUIRED." (See 9 FAM 41.31 N13.6.)

b. An alien enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or avocational. When the nature of a school's program is difficult to determine, you should request from DHS the proper classification of the program and whether approval of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status -for Academic and Language Students, will be more appropriate. (See 9 FAM 41.31 N14.8.)

c. Currently, aliens traveling to the United States to attend seminars or conferences that are required to earn a degree are not eligible for B visa

classification. In the case of an alien traveling to the United States to attend seminars and conferences for credit toward a degree, the study is neither incidental to a tourist visit, avocational, nor recreational.

9 FAM 41.61 N9.2-2 F-1 or M-1 Visa for Visitor Who Will Engage in a Short Term Program

(CT:VISA-1064; 10-09-2008)

a. An alien may only qualify for an F-1 or M-1 if he or she will be engaging in a full course of study. If a student plans to spend a week or more of full-time study (more than 18 hours per week) in the United States, an F-1 or M-1 visa is appropriate. Currently these students would need a new SEVIS ID and new Form I-20 for each visit.

b. If a student is receiving academic credit for the program of study or the program of study is required for his/her degree, the student needs an F-1 or M-1 visa. 8 CFR 214.2(b)(7) prohibits an alien from enrolling in a course of study on a B-1 or B-2 visa.

c. Students who are enrolled in an online degree program but who need to travel to the United States for a short course required for their degree would qualify for an F visa if they engaged in a "full course of study" while in the United States "8 C.F.R. 214.2(f)(6)(i)(G) currently states that "no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination, or other purposes integral to the completion of the class."

9 FAM 41.61 N9.3 M-1 Nonacademic Student

(CT:VISA-1064; 10-09-2008)

DHS regulations (8 CFR 214.2(m)(9)) specify that "successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A 'full course of study' as required by section 101(a)(15)(M)(i) of the Act means:

(1) Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course

load to complete the course of study during the current term;

(2) Study at a postsecondary vocational or business school, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:

(a) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or

(b) A school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(3) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or

(4) Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation."

9 FAM 41.61 N9.4 Aviation Training

(CT:VISA-1064; 10-09-2008)

a. Congress enacted the Aviation and Transportation Security Act (ATSA) in 2001. Section 113 of ATSA imposed notification and reporting requirements on the providers of aviation training to aliens and other specified individuals. On March 17, 2003, the Foreign Terrorism Tracking Task Force (FTTTF) implemented the Flight Training Candidate Checks Program (FTCCP), by which aviation training providers will notify FTTTF of specific categories of flight training candidates. FTCCP implementation means that the de facto suspension of visa issuance to flight training candidates subject to Section 113 was lifted effective March 17, 2003.

b. Consular officers no longer need to determine in flight training candidate visa cases the weight of the aircraft on which training is to be offered, the applicability of that training to heavier aircraft, or any other criteria that might render the applicant subject to Section 113. The implementation of

FTCCP assigns the determination of whether Section 113 applies to an individual trainee to training providers, and the determination of whether the offering of such training to a particular candidate constitutes a potential risk to aviation or national security to FTTTF, as established in the statute. Consular officers may process aviation trainee visa cases to conclusion without needing to determine whether Section 113 applies.

c. Before providing instruction to a flight training candidate who falls under the purview of Section 113 of ATSA, the Federal Aviation Administration (FAA) certified training provider must submit a complete Flight Training Candidate Checks Program (FTCCP) form and arrange for the submission of fingerprints to the Department of Justice (DOJ). Candidates may begin this process by completing the online FTCCP form. After a candidate has completed the form, it will be forwarded electronically to the training provider for verification that the candidate is a bona fide applicant. Verification by the provider will be considered submission of the form to FTTTF/FTCCP as described above. Candidates also must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by, or under the supervision of, a Federal, State, or local law enforcement agency, or by another entity approved by the director of the FTTTF, in consultation with the FBI's Criminal Justice Information Services Division.

d. At this time the FTTTF/FTCCP has no process in place for administering fingerprints taken outside the United States. Any applicant requesting fingerprints should be told that at this time there is no process in place for taking fingerprints at a United States embassy or consulate solely for the purpose of flight training. Candidates should pursue fingerprinting upon arrival at the direction of their flight-training provider.

9 FAM 41.61 N10 PERIOD OF STAY

9 FAM 41.61 N10.1 For F-1 Applicants

(CT:VISA-1064; 10-09-2008)

a. An alien entering as an F-1 student or granted a change to that classification is admitted or given an extension of stay for the duration of status. Duration of status means the time during which the student is pursuing a full course of study and any additional periods of authorized practical training, plus 60 days following completion of the course or practical training within which to depart. Since November 30, 1996, however, the duration of status of an F-1 student in a publicly funded secondary school cannot exceed an aggregate of 12 months schooling. (See 9 FAM 41.61 N11.)

b. An academic student is considered to be in status during the summer between terms, if eligible and intending to register for the next term. Moreover, a student compelled by illness or other medical condition to interrupt or reduce studies is considered to be in status until his or her recovery. The student is expected to resume a full course of study at that time.

c. During the Asian economic crisis, the Department of Homeland Security (DHS) amended its regulations to permit the Commissioner to waive the usual limitations, including hours of coursework, on employment for students faced by unexpected severe economic circumstances. These might include such elements ranging from substantial fluctuations in exchange rates to loss of on-campus employment or other financial aid through no fault of the student, among others. Students granted such waivers are deemed to be in status until the economic emergency is over and the necessity for such reduced studies has passed.

9 FAM 41.61 N10.2 For M-1 Applicants

(CT:VISA-1064; 10-09-2008)

a. The period of stay for an M-1 student, whether from admission or through a change of nonimmigrant classification, is the time necessary to complete the course of study indicated on Form I-20 plus 30 days within which to depart, or 1 year, whichever is less.

b. An M-1 student may be granted an extension of stay if it is established that the student:

(1) Is a bona fide nonimmigrant currently maintaining student status; and

(2) Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

9 FAM 41.61 N11 APPLYING INA 214(M)

9 FAM 41.61 N11.1 Public Primary School or a Publicly Funded Adult Education Program

(CT:VISA-1064; 10-09-2008)

Congress imposed limitations on aliens' attendance in publicly funded institutions in the 1996 immigration legislation. As of November 30, 1996, F-1 visas cannot be issued to persons seeking to enter the United States in order to attend a public primary school or a publicly funded adult education program. (See INA 214(m).) This does not, however, bar a dependent of a

nonimmigrant in any classification, including F-1, from attendance at either a public primary school, an adult education program, or another public educational institution, as appropriate. For the purpose of INA 214(m), primary school means kindergarten through 8th grade.

9 FAM 41.61 N11.2 Secondary School

(CT:VISA-1064; 10-09-2008)

a. INA 214(m) restricts, but does not prohibit, the issuance of F-1 visas to students seeking to attend public high schools. Secondary school is deemed to be grades 9-12. As of November 30, 1996, two new additional criteria were imposed on intending F-1 students at public high schools:

   (1) They cannot attend such school for more than 12 months; and

   (2) They must repay the school system for the full, unsubsidized, per capita cost of providing the education to him or her.

b. You cannot issue an F-1 visa if the length of study indicated on the Form I-20 exceeds the 12-month cumulative period permitted under INA 214(m). F-1 visas issued to attend public secondary schools should be limited to 12 months.

c. It is important to remember that public secondary attendance in a status other than F-1 (including unlawful status) does not count against the 12-month limit, nor does attendance in F-1 status prior to November 30, 1996. However, if an alien obtained an extension of status or departed the United States and was readmitted in F-1 status after November 30, 1996, the alien would be required to comply with INA 214(m) and the one-year limit would begin to run from the date of the extension or the date of readmission in F-1 status.

d. The 12-month limitations apply to students who entered or transferred to public schools on or after November 30, 1996. Those already in public schools prior to that date and remaining in that status may continue without a break until completion of their courses. A break in the schooling brings INA 214(m) into effect.

9 FAM 41.61 N11.2-1 Reimbursement

(CT:VISA-1064; 10-09-2008)

a. A public school system issuing a Form I-20 for attendance at a secondary school must indicate on the Form I-20 that such payment has been made and the amount of such payment. School districts may not waive or otherwise ignore this requirement. If the Form I-20 does not include the requisite information, the student must have a notarized statement

stating the payment has been made and the amount from the designated school official (DSO) who signed the Form I-20. If not, the visa must be refused, under INA 221(g), until the applicant provides the necessary documentation.

b. Although the per capita costs vary from one school district to another (and sometimes from one school to another within the same district), the averages across the country have ranged from about $3400 to more than $10,000. They run somewhat less than that in Puerto Rico and U.S. territories. These figures are guidelines only, and should not be taken as absolutes. If, however, a Form I-20 indicates a repaid cost radically different (for example, something less than $2,000), you should make further inquiries of the school district before determining whether or not this is acceptable. If a request for additional information does not resolve the matter, consular officers may refer the matter to the Department (CA/VO/F/P and CA/VO/L/A).

9 FAM 41.61 11.2-2 Aliens Under Legal Guardianship of American Citizen Relatives

(CT:VISA-1064; 10-09-2008)

Schools sometimes advise relatives to declare themselves as the alien's legal guardian. The school then admits the foreign student as a resident, wrongfully assuming that this would exempt the alien from the INA 214(m) requirements. The student's status as a resident of the school district is irrelevant. Likewise, the fact that the student's U.S. sponsor has paid local property/school taxes does not fulfill the reimbursement requirement of INA 214(m).

9 FAM 41.61 N11.3 Student Visa Abusers

(CT:VISA-1064; 10-09-2008)

INA 212(a)(6)(G) provides sanctions against foreign students who fail to comply with the INA 214(m) requirements. An alien in F-1 status who violates the 214(m) provisions is excludable until he or she has been outside the United States for a continuous period of five years after the date of the violation. (See also 9 FAM 40.67 Notes.) Consular officers should note that aliens who are not subject to INA 214(l) are not subject to INA 212(a)(6)(G).

9 FAM 41.61 N12 SPOUSE AND CHILD OF F-1 OR M-1 STUDENT

9 FAM 41.61 N12.1 Refusals of Spouse and Child of F-1 or M-1 Student based on lack of intent to not to abandon residence abroad

(CT:VISA-1064; 10-09-2008)

Before issuing an F-2 or M-2 visa to a spouse or child of a principal F-1 or M-1 alien, you must be satisfied that the applicant can be expected to depart from the United States upon the termination of the student status of the principal alien. (See 9 FAM 41.61 N4.) Consular officers should keep in mind the concept that coming to a different conclusion about family members entitled to a derivative nonimmigrant classification and the principal should be rare. When justified, it should be based on specific, identifiable differences in the circumstances relating to the principal and the family member(s). (See 9 FAM 41.11 N4.3.)

9 FAM 41.61 N12.2 Relationship Between F-1 or M-1 Student and Dependents

(CT:VISA-1064; 10-09-2008)

If you are satisfied that the relationship between the principal alien and the dependent exists, and you are satisfied that the applicant can be expected to depart from the United States upon the termination of the student status of the principal alien (see 9 FAM 41.61 N4), you should issue the visa. Coming to a different conclusion about family members entitled to a derivative nonimmigrant classification and the principal should be rare. When justified, you should base your decision on specific, identifiable differences in the circumstances relating to the principal and the family member(s). Please note that if you doubt an alien's intent to return abroad, the alien cannot satisfy your doubts by offering to leave a child, spouse, or other dependent abroad. (See 9 FAM 41.31 N3.5.)

9 FAM 41.61 N12.3 Separate Form I-20 Required for Accompanying Spouse and Child of F-1 or M-1 Student

(CT:VISA-1064; 10-09-2008)

F-2 or M-2 dependents must have their own Form I-20 in order to qualify for a visa whether they are accompanying or following to join. The F-2 or M-2 must present this evidence to both you and the immigration officer at the port of entry (POE).

9 FAM 41.61 N12.4 Classification of Spouse or

Child Who Will Attend School in the United States

(CT:VISA-1064; 10-09-2008)

a. A spouse qualified for an F-2, M-2, or any other derivative nonimmigrant classification may only study if those studies are incidental to the primary purpose of travel: to accompany his or her spouse to the United States. A spouse in F-2 status, therefore, may only study part time. A spouse of an F-1 visa holder may only enroll in a full-time course of study if he or she qualifies under INA 101(a)(15)(F)(i) as a nonimmigrant student.

b. A child qualified for an F-2, M-2, or any other derivative nonimmigrant classification is not required to qualify under INA 101(a)(15)(F)(i) as a nonimmigrant student even though the child will attend school while accompanying the principal alien. (See 9 FAM 41.11 N5.2.) Moreover, such a child could not qualify for F-1 status for attendance at a public primary school and, if in F-1 status, would be limited to 12 months training at a public high school. See the SEVP website for detailed guidance on which nonimmigrant visa (NIV) classifications permit study.

9 FAM 41.61 N13 EMPLOYMENT OF F-1 AND M-1 STUDENT, SPOUSE, AND CHILDREN

9 FAM 41.61 N13.1 On-Campus Employment for F-1 Student

(CT:VISA-894; 06-13-2007)

An F-1 student may accept on-campus employment in an enterprise operated by or on behalf of the school if a U.S. resident will not be displaced as a result. Locations suitable for on-campus employment may be physically separate but must be educationally affiliated with the established curriculum and the employment must be an integral part of the student's educational program. The employment may not exceed 20 hours a week while school is in session and the student must be enrolled on a full-time basis. A student authorized to work on the above basis may work full-time when school is not in session, including during the student's vacation, if the student is eligible and intends to register for the next term or session. The student may not engage in on-campus employment after completion of the course of study, except in cases where the employment is deemed to be practical training as set forth in 9 FAM 41.61 N13.4.

9 FAM 41.61 N13.2 Off-Campus Employment for F-1 Student

(CT:VISA-706; 02-17-2005)

a. An F-1 student may not accept off-campus employment at any time during the first academic year of study. (The "first academic year of study" means the first nine (9) months in student status.) A student in a program longer than one (1) academic year must seek authorization from the designated school official (DSO) for off-campus employment of not more than 20 hours a week. Such employment authorization is automatically terminated if the student fails to maintain status. The designated school official must certify that:

   (1) The student has been in F-1 status for one full academic year;

   (2) The student is in good standing and carrying a full course of study;

   (3) The student has established that acceptance of employment will not interfere with the full course of study; and

   (4) The prospective employer has submitted a labor and wage attestation or the student has established a severe economic necessity for employment due to unforeseen circumstances beyond the student's control.

b. If a student who has been granted off-campus employment authorization temporarily leaves the country during the period of time when employment is authorized, such employment can be resumed upon return. The student must, however, be returning to the same school.

9 FAM 41.61 N13.3 Employment of F-2 and M-2 Spouse and Children

(CT:VISA-1064; 10-09-2008)

The F-2 spouse and children of an F-1 student may not accept employment. The M-2 spouse and children of an M-1 student may not accept employment.

9 FAM 41.61 N13.4 Practical Training

(TL:VISA-706; 02-17-2005)

Students are eligible for practical training programs only after they have completed nine consecutive months in an approved college-level institution or are graduate students who need to participate immediately in curricular practical training.

9 FAM 41.61 N13.4-1 Employment as Part of Curricular or Alternate Work/Study Practical Training for F-1 Student

(CT:VISA-1064; 10-09-2008)

A student enrolled in a college or other academic institution having alternate work/study courses as part of the curriculum within the student's program of study may participate in and be compensated for such practical training when so authorized by the designated school official (DSO). Students may not begin such training before endorsement of their student Form I-20 by the DSO with such endorsement. Periods of actual off-campus employment in a work/study program are considered practical training and are deducted from the total practical training time for which the student is eligible. Thus, students who have engaged in a full year's practical training will not receive authorization to engage in practical training after completion of the course of study. Restated, such authorization may be granted for a maximum aggregate of 12 months. However, for graduates of colleges, universities, and seminaries, the maximum aggregate of such training may not exceed the duration of the course of study when such study is less than 12 months.

9 FAM 41.61 N13.4-2 Effect of a Strike at the Place of Employment

(CT:VISA-1064; 10-09-2008)

Any authorization for employment for purposes of practical training is suspended in the event of a strike at the place of employment.

9 FAM 41.61 N13.5 Optional Practical Training

(CT:VISA-1064; 10-09-2008)

a. An F-1 student may otherwise apply for off-campus practical training in a job related to his or her major area of study, during vacations (full time), or for not to exceed 20 hours a week during the school year, after completion of all course requirements for graduation (not including thesis or equivalent), or after completion of all requirements. Such training must be completed within 12 months. In addition to approval by the DHS, the student must obtain an Employment Authorization Document (EAD). If the student interrupts the employment for a brief trip abroad, both the unexpired EAD and the endorsed Form I-20 ID will be required for re-entry to complete the training.

b. Please note that Optional Practical Training (OPT) is different from Curricular Practical Training (CPT), which is part of a student's degree curriculum and can only be authorized during a student's course of studies. OPT, by contrast, can be authorized part-time during the student's degree program as well as after graduation.

9 FAM 41.61 N13.5-1 Extension of OPT for Science, Technology, Engineering, or Mathematics (STEM) Students

(CT:VISA-1064; 10-09-2008)

a. Effective April 8, 2008, F-1 students who have been enrolled on a full-time basis for at least one full academic year may be authorized for 29 months of Optional Practical Training (OPT). An F-1 student with a STEM degree who is already in a period of approved post-completion OPT may apply to extend that period by up to 17 months, for a maximum total period of 29 months. The sponsoring school must verify the student's eligibility and recommend the extension through SEVIS. Once the school recommends the extension, the student must submit a Form I-765, Application for Employment Authorization, and all appropriate fees to USCIS (additional filing information can be found at www.uscis.gov).

b. F-1 students on 12-month OPT after April 8, 2008 are now allowed an aggregate maximum period of unemployment of 90 days for F-1 students on 12-month OPT, and 120 days for a student who has received the 17-month extension. This measure allows time for job searches or a break when switching employers.

c. A student is eligible for the STEM OPT extension if he or she has filed an H-1B petition in a timely manner. Students may remain on extended OPT until they receive a response from USCIS regarding their petition. If the petition is denied, the OPT extension ends. If the petition is approved, OPT may be extended until the H-1B petition starts, usually October 1.

d. As the OPT extension is automatic, USCIS will not necessarily provide the student with a renewed EAD. Therefore, any students on the automatic STEM OPT extension may not be able to present a valid EAD when they apply to renew their visa. They should, however, have a Form I-20 annotated for OPT and proof that their petition was filed in a timely manner.

e. A list of approved STEM degrees and significant additional policy guidance can be found on the SEVP website.

9 FAM 41.61 N13.6 Practical Training for M-1 Student

(CT:VISA-1064; 10-09-2008)

Except for temporary employment for practical training as set forth in 9 FAM 41.61 N13.6, an M-1 student may not accept employment. An M-1 student who desires temporary employment for practical training must apply on Form I-538, Certification by Designated School. The student submits the application to the DHS office having jurisdiction over the school the student was last authorized to attend. If approval is granted, DHS will endorse the student's Form I-20 with the dates the authorization for practical training/employment begins and ends.

9 FAM 41.61 N13.7 Temporary Absence of F-1 or M-1 Student Granted Practical Training

(CT:VISA-1064; 10-09-2008)

An F-1 or M-1 student authorized to accept employment for practical training, who leaves the country temporarily, may be readmitted for the remainder of the authorized period. The student must be returning solely to perform the authorized training; conversely, the student may not be readmitted to begin training that was not authorized prior to departure. Both a valid F-1 or M-1 visa and the Form I-20 are required to reenter the United States for practical training purposes.

9 FAM 41.61 N14 F-3 AND M-3 NONIMMIGRANT VISA CATEGORIES

9 FAM 41.61 N14.1 The Border Commuter Student Act of 2002

(CT:VISA-879; 05-01-2007)

The Border Commuter Student Act of 2002 (8 U.S.C. 1101(a)(15)(F), 8 U.S.C. 1101(a)(15)(M)) which was signed into law on November 2, 2002, created the F-3 and M-3 nonimmigrant visa (NIV) categories.

9 FAM 41.61 N14.2 Background

(CT:VISA-1064; 10-09-2008)

a. Prior to the September 11 terrorist attacks on the United States, Canadian and Mexican citizens living in their home countries, but traveling back and forth across the border to take part-time classes in the United States were admitted into the country as visitors. However, due to security concerns in the aftermath of the attacks, the Immigration and Naturalization Service (INS), now the Department of Homeland Security (DHS), stopped admitting these part-time students as DHS held that they were not eligible for admittance to the United States as visitors, since their purpose was to attend class. They also were not eligible for either F-1 (academic) or M-1 (non-academic or vocational) visas because these classifications require students to attend class on a full-time basis.

b. The "Border Commuter Student Act of 2002", Public Law 107-274, created two visa classifications for Canadian and Mexican citizens and residents who commute to the United States for the purpose of full-time or part-time study at a DHS-approved school. These students (classified

F-3 and M-3) are permitted to study on either a full-time or part-time basis.

c. The family members of border commuter students are not entitled to derivative F-2 or M-2 status.

9 FAM 41.61 N14.3 Created For Canadian And Mexican Citizens

(CT:VISA-894; 06-13-2007)

a. The F-3 and M-3 visa categories were created for the citizens and residents of Canada and Mexico. The visa category allows Canadian and Mexican students to commute to the United States on a daily basis for the sole purpose of attending a DHS-approved school on a full-time or part-time basis.

b. F-3 and M-3 visa holders do not reside in the United States. Their spouses and children are not eligible for visas that would grant them temporary residency in the United States.

9 FAM 41.61 N14.4 Subject to Student and Exchange Visitor Information System (SEVIS)

(CT:VISA-1064; 10-09-2008)

F-3 and M-3 visa holders are subject to the requirements of the Student and Exchange Visitor Information System (SEVIS). SEVIS is used to track and monitor schools and programs, students, exchange visitors, and their dependents throughout the duration of approved participation within the United States education system. Students also must have an approved Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-for Academic and Language Students, and must pay the SEVIS fee.

9 FAM 41.61 N14.5 F-3 Nonimmigrant Visa (NIV)

(CT:VISA-1064; 10-09-2008)

The F-3 nonimmigrant visa (NIV) is issued to a Canadian or Mexican citizen, who maintains an actual residence and place of abode in his or her country which he or she has no intention of abandoning, and who commutes to the United States temporarily for sole purpose of pursuing a full course of study at a DHS–approved academic or other recognized nonacademic institution, or in a language training program in the United States. (See INA 101(a)(15)(F)(iii) (8 U.S.C. 1101(a)(15)(F)(iii)).) Students must also meet English language standards as noted on the Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-for Academic and Language

Students.

9 FAM 41.61 N14.6 M-3 Nonimmigrant Visa (NIV)

(CT:VISA-894; 06-13-2007)

The M-3 nonimmigrant visa (NIV) is issued to a Canadian or Mexican citizen, who maintains an actual residence and place of abode in his or her country which he or she has no intention of abandoning, and who commutes to the United States temporarily for sole purpose of pursuing a full course of study at a DHS–approved vocational or other recognized nonacademic institution (other than in a language training program) in the United States. (See INA 101(a)(15)(M)(iii) (8 U.S.C. 1101(a)(15)(F)(iii)).) Students must also meet English language standards as noted on the Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-for Academic and Language Students.

9 FAM 41.61 N14.7 Dependents

(CT:VISA-894; 06-13-2007)

a. As previously mentioned in 9 FAM 41.61 N14.2, the family members of F-3 and M-3 visa holders are not entitled to derivative F-2 or M-2 status. This is because commuters, by definition, do not reside in the United States. As such, family members have no basis to reside in the United States.

b. If a student on an F-3 or M-3 nonimmigrant visa (NIV) wanted his or her dependents to have F-2 or M-2 dependent status in the United States, the student would have to live in the United States and attend school in F-1 or M-1 status, so that the dependents would be qualified to apply for the required F-2 or M-2 status.

9 FAM 41.61 N15 FULL VALIDITY STUDENT VISAS ISSUED

(CT:VISA-1064; 10-09-2008)

As a rule, you should issue full validity F-1 and M-1 visas in accordance with the appropriate host-country reciprocity schedule. In cases where the student is going for a short-term program, it may be appropriate to limit the visa to the length of the program if you are certain the student does not plan to continue studies in the U.S. in the near term.

9 FAM 41.61 N16 VISA ANNOTATIONS

9 FAM 41.61 N16.1 Name of School and SEVIS ID

(CT:VISA-1064; 10-09-2008)

a. An F-1 or M-1 visa must be annotated with the SEVIS ID and the name of the institution that the alien will initially attend. You must inform an applicant who has been accepted by more than one institution that the visa application will be considered only on the basis of the Form I-20 issued by the school which the applicant will attend. You must also warn the applicant that the immigration inspector at the port of entry (POE) can refuse admission if given a Form I-20 from a school other than the one named on the visa, or if the student indicates an intention to attend a different institution.

b. This procedure does not apply to any subsequent F-1 visa issued to return to and complete the student's course of study whether at the same or a different school.

9 FAM 41.61 N16.2 Entry of Student Prior to Enrollment

(CT:VISA-1064; 10-09-2008)

a. You must not issue a student visa to an applicant more than 120 days in advance of his or her studies and should notify the applicant that he or she cannot enter the United States more than 30 days in advance of the beginning of studies. Applicants continuing on a student visa are not subject to this restriction.

b. A student who desires an earlier entry must qualify for, and obtain, a visitor visa. In such a case, a notation must be made below the visa that the applicant is a prospective student. If the applicant presents a fully completed and signed Form I-20 and the required evidence of financial resources, the following notation must be made in the right-hand margin of page 1 of the Form I-20: "B-2 VISA ISSUED ON (DATE)--PROSPECTIVE STUDENT."

c. At the time of issuance of the B-2 prospective student visa, the visa issuing officer must carefully explain to the applicant that, before beginning any studies, he or she must obtain a change of classification to that of student. The alien must follow standard procedures and fee requirements as set by DHS/USCIS for changing status.

9 FAM 41.61 N16.3 Entry When School not Selected

(CT:VISA-1064; 10-09-2008)

a. A prospective student applicant who has neither been issued a Form I-20 nor made a final selection of a school may wish to enter for the primary purpose of selecting a school. If the applicant qualifies for a visitor visa, and would appear to qualify for a student visa, a B-2 visa may be issued with a notation at the bottom reading "PROSPECTIVE STUDENT, SCHOOL NOT SELECTED."

b. You must inform the prospective student of:

   (1) The conditions relating to student status;

   (2) The financial evidence required; and

   (3) The need to apply to Department of Homeland Security (DHS) for a change of status if a school is selected.

NOTE: See 9 FAM 41.113 PN6.2 for a discussion of annotations for prospective student visas.

9 FAM 41.61 N16.4 Admitted Student Traveling Without Form I-20

(CT:VISA-1064; 10-09-2008)

a. A Form I-20 must be presented at the port of entry for a student to be admitted in F or M status.

b. When an alien has documentary evidence that admission to a particular school has been granted, and when circumstances warrant the alien's departure before the Form I-20 has been received, you may issue a B-2 visa for travel purposes with a notation below the visa reading: "PROSPECTIVE STUDENT--SUPPORTING DOCUMENTS TO BE PRESENTED AT THE PORT OF ENTRY."

c. This procedure must be followed only if the alien possesses credible documentary evidence of admission on the institution’s letterhead stationery, signed by the designated school official. You must inform an alien issued a B-2 visa in these circumstances that, upon arrival at the port of entry (POE), he or she must present the same documentary evidence to the immigration officer. The alien must also be advised that, once admitted, it will be necessary to:

   (1) Obtain a Form I-20 from the institution granting admission; and

   (2) Present to the DHS office having jurisdiction:

      (a) The completed Form I-20;

      (b) The required evidence of financial resources; and

      (c) The filing fee for a change of classification.

9 FAM 41.61 N16.5 Entering for Admission Interview or Entrance Examination

(CT:VISA-1064; 10-09-2008)

a. When a prospective student presents credible evidence of the need to enter for an admission interview or to take an entrance examination , a B-2 prospective student visa may be issued with an annotation at the bottom of the visa reading: "PROSPECTIVE STUDENT, ADMISSION INTERVIEW" or "PROSPECTIVE STUDENT, SCHOOL ENTRANCE EXAMINATION."

b. The only credible evidence acceptable under this procedure is a letter from the approved school which:

   (1) Gives the date on which Department of Homeland Security (DHS) granted approval for the school to issue Form I-20 and the DHS file number assigned to the school;

   (2) States that, without exception, all applicants for admission must take an entrance examination or appear for an interview for admission to the school or department of the school considering the alien's admission and the alien needs to obtain a visa specifically for one or the other of these two purposes; and

   (3) States that the student has met all other requirements for admission.

c. When the above procedure is used, you must inform the alien of:

   (1) The need to present to the immigration inspector at the port of entry (POE) the same letter from the school showing that the student's attendance is required for the admission interview or examination;

   (2) The need to apply to DHS for a change of classification if a Form I-20 is issued after the interview or examination; and

   (3) The financial requirements for attaining student status.

9 FAM 41.61 N17 TEMPORARY ABSENCE

9 FAM 41.61 N17.1 Aliens Who Apply While Abroad for an F-1 or M-1 Visa

(CT:VISA-1064; 10-09-2008)

Except as provided below, an alien making a short trip abroad during an authorized period of study, who needs to obtain a new visa during such

absence, need only present Form I-20, properly executed and endorsed. If otherwise qualified, the applicant may be issued the appropriate visa. The foregoing is applicable only if there has been no substantive change in item(s) 3, 4, 6, and/or 7 of the student's most recent Form I-20.

9 FAM 41.61 N17.2 Temporary Absence of Aliens Applying Abroad for Attendance at School Other than Listed on the Visa

(CT:VISA-1064; 10-09-2008)

A student temporarily abroad who intends to return to study at a United States institution other than the one for which the original visa was issued may seek admission with the original visa, if still valid, and the Form I-20 from the new school. If the student wishes to apply for a new visa, however, he or she must present proof that the transfer has been effected and the student is in "initial" or "active" status at the new school.

9 FAM 41.61 N17.3 Renewing F/M/J Visas for Returning Students

(CT:VISA-1064; 10-09-2008)

You generally should not refuse to renew F/M/J visas to returning students or exchange visitors who have remained in status and have not had any significant changes in either their academic program or their personal circumstances. When a foreign student engaged in study takes a short trip abroad and requires a visa to return to the United States, you are encouraged to issue visas when possible to allow the student to complete his or her study.

9 FAM 41.61 N17.4 F And M Visa Invalidation after Five Months Abroad

(CT:VISA-1064; 10-09-2008)

a. Students admitted to the United States in F-1 or M-1 status may lose that status if they do not resume studies within five months for transferring schools or programs. Unless USCIS reinstates the student's status, the student's F-1 or M-1 visa would also be invalid for future travel.

b. In addition, students who leave the United States for a break in studies of five months or more may lose their F-1 or M-1 status unless their activities overseas are related to their course of study. When presented a previously used, unexpired F-1 or M-1 visa by a returning student who has been outside the United States and out of student status for more

than five months, a U.S. Customs and Border Protection (CBP) immigration inspector at a port of entry may find the student inadmissible under INIA 212(a)(7)(B)(i)(ii) for not possessing a valid nonimmigrant visa. CBP may also cancel the visa after granting the student permission to withdraw the application for admission. Therefore, 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.

9 FAM 41.61 N18 SPECIAL CASES

9 FAM 41.61 N18.1 Students Destined to Schools Which Are Avocational or Recreational in Character

(CT:VISA-1064; 10-09-2008)

Department of Homeland Security (DHS) cannot approve schools which are avocational or recreational in character for issuance of Certificates of Eligibility. Students coming to study in such schools may be classified B-2, if the purpose of attendance is recreational or avocational. When the nature of a school's program makes determining its character difficult, officers should consult the appropriate DHS office in determining the alien's proper classification. (See 9 FAM 41.31 N14.8.)

9 FAM 41.61 N18.2 Elementary School Students

(CT:VISA-1064; 10-09-2008)

a. Only children qualified for derivative nonimmigrant classification through a principal alien parent (see 9 FAM 41.11 N5.2) may attend a publicly funded elementary school. (See 9 FAM 41.61 N1.) No F-1 visa may be issued on the basis of a Form I-20, issued by a public elementary school or school system. However, any student of school age who is otherwise qualified may receive an F-1 visa under INA 101(a)(15)(F)(i) to attend a private elementary school.

b. Young applicants for student visas are frequently members of large families of low income. A relative, friend, or institution in the United States may offer to accept one or more of the children and provide an indeterminate number of years of schooling. Elementary school applicants are, of course, not qualified to give assurances that they will depart upon completion of the projected course of study. You must, therefore, be careful to ascertain that the family situation is such that entry for purposes of immigration is not being sought for the applicant in

the guise of a student, but that, upon completion of the course of study, the applicant can be expected to return abroad.

9 FAM 41.61 N18.3 Candidates for Religious Orders

(CT:VISA-1064; 10-09-2008)

Aliens desiring to enter a convent or other institution for religious training of a temporary nature are classifiable as F-1 students under INA 101(a)(15)(F), if the institution has been approved as a place of study and the applicant will return abroad after concluding the course of study or training.

9 FAM 41.61 N18.4 Student Destined to U.S. Military Training Facility

(CT:VISA-1064; 10-09-2008)

Civilian aliens accepted by any of the U.S. Military Academies shall be classified as F-1 students and required to present Form I-20. Alien military personnel coming to the United States for education or training at any armed forces training facility are to be classified as foreign government officials and issued A-2 visas.

9 FAM 41.61 N18.5 Alien Graduate of Foreign Medical School

(CT:VISA-1064; 10-09-2008)

a. Foreign medical graduates seeking to enter temporarily in connection with their profession are not eligible for F-1 visas. Such applicants must apply and qualify for immigrant visas (IV) or for exchange visitor (J) or temporary worker (H) visas. (See 9 FAM 41.62 N9 and 9 FAM 41.53 N4.)

b. At least one school has been approved to issue Forms I-20 to foreign medical graduates for a review-type continuing education course of study in preparation for taking tests in the field of medicine. Foreign medical graduates seeking to enter the United States to take such a review-type course of study who present a Form I-20 from an approved school are classifiable as F-1 students.

9 FAM 41.61 N18.6 Alien Entering the United States for Nursing Training

(CT:VISA-1064; 10-09-2008)

DHS has approved a number of hospital-affiliated nurses' training schools for attendance by nonimmigrant students. In cases where a school has been

thus approved, the alien's application may be given consideration under INA 101(a)(15)(F).

9 FAM 41.61 N19 MAINTENANCE OF STATUS AND DEPARTURE BOND

(CT:VISA-1064; 10-09-2008)

See 9 FAM 41.11 N8.

9 FAM 41.61 N20 AUTOMATIC EXTENSION OF VALIDITY OF VISA

(CT:VISA-1064; 10-09-2008)

See 9 FAM 41.112.