

F-1 and J-1 Foreign Students

How to Recognize a Foreign Student

F-1, M-1 and, in some cases, J-1 classifications designate persons admitted to the United States as foreign students attending U.S. educational institutions. F-1 and M-1 foreign students are issued Forms I-20 by the USCIS. J-1 foreign students are issued Form DS-2019 by the United States Information Agency (USIA). Foreigners may study in the United States under other nonimmigrant classifications, but in those cases are not eligible for benefits (e.g. practical training) of the student-specific classifications.

Period of Admission

The Arrival-Departure Records (Forms I-94) of F-1 students indicate that they have been admitted to the United States for the duration of status (D/S), i.e., as long as necessary to complete the approved course of study, a post-completion period of practical training during which they are entitled to employment authorization, plus 60 days within which to depart from the United States. M-1 students are admitted for the lesser of one year or the period of time necessary to complete the approved course of study plus 30 days. J-1 students are admitted for the duration of approved exchange programs (I-94's also stamped or marked D/S) sponsored by a United States educational institution.

Employment Authorization: J-1 and M-1 students

The general rule is that foreign students in F-1 and M-1 status are not permitted to work in the United States. However, there are some significant exceptions. F-1 students may be employed as follows:

1. Part-time on-campus ¹.
2. Curricular practical training that is required for graduation or for which the approved institution gives credits.
3. Optional practical training, either prior to or following graduation, for a maximum of one year for F-1 students (plus an additional 24 months for students with a STEM degree employed by an E-Verify employer) and six months ² for M-1 students ³. The purpose of practical training is for the students to apply the knowledge and skills gained from their educational programs. J-1 students are employable only to the extent and under the circumstances specified by the approved program sponsor on the Form DS-2019.
4. Severe economic hardship: unforeseeable upon issuance of the Form I-20, may entitle a student whose designated school official certifies that other employment options are not available to meet academic and subsistence costs to apply to USCIS for an employment authorization document.

Consular Visas for Foreign Students

To be granted F-1, M-1, or J-1 visas to travel to the United States by U.S. consulates in their home countries, foreign students must demonstrate that they have the approved institutional support and/or personal/family

financial resources necessary to meet their tuition and subsistence needs. This process is meant to insure that most foreign students will not need to work off campus while they are attending school full-time.

Importance of Maintaining Status

Whether subject to the general rule regarding employment or eligible for one of the exceptions, foreigners in student status are required to maintain full-time course loads during the school year in order to maintain that status and remain legally in the United States. There is an important distinction between eligibility to work and eligibility to remain in the United States. Both issues are important, since even though a given student may meet one of the employment exceptions and present the required documents, he/she is not work authorized if out of status, i.e., not enrolled as a full-time student (excluding summers) at the approved institution.

EMPLOYMENT OF VOCATIONAL STUDENTS (M-1)

This visa classification covers students pursuing full-time vocational and other nonacademic educational programs. The only employment option for M-1 students is post-completion practical training approved by the designated school's approving official, who must endorse the student's I-20 ID copy. Employment may be authorized for one month for every four months of study, up to a maximum of six months. Employment authorization for unforeseen economic necessity is not available for M-1 students. The document required to establish employment eligibility is an Employment Authorization Document (EAD) issued by the USCIS (Form I-688B or I-766).

EMPLOYMENT OF EXCHANGE VISITOR STUDENTS (J-1)

Exchange visitor programs are arranged through the United States Information Agency (USIA). Although they may consist of U.S. studies that make the participating J-1 exchange visitor students virtually indistinguishable from foreign students in F-1 status, different rules apply. Some exchange programs allow participants to be employed in their specialty fields, while other programs restrict participants to study or research. In all cases, as with F-1 students, employers must insure that J-1 employees not only are lawfully permitted to work (and, if so, to work for them) but also that they are only employed during the period for which they have been approved to remain in the United States.

Permissible employment, if any, should be indicated on the Form DS-2019 of those J-1 visitors whose USIA-approved program guidelines permit employment. Generally, this employment is *employer-specific*, meaning that the individual may work only for the employer which sponsored him/her for J-1 status or has been approved by the applicable USIA program. In cases where the DS-2019 is not clear with respect to given employment, employers may wish to review the individual's Form I-94 and/or written approval of the J-1 program official.

EMPLOYMENT OF ACADEMIC STUDENTS (F-1)

Curricular Practical Training

This may consist of alternate work/study, internship, cooperative education, or any other type of required internship or practicum offered by sponsoring employers through cooperative agreements with the school. The document required to establish employment eligibility to employers is the Form I-20 ID certified by the Designated School Official (DSO) from the student's approved institution. Although the Designated School Official must notify the USCIS of the student's practical training on Form I-538, USCIS approval per se is not required. Employers are not responsible for any part of this process or for reviewing documentation other than the Forms I-94 and endorsed I-20.

Optional Practical Training

Temporary off-campus employment may be permitted for 20 hours (maximum) per week or full-time during summers and between academic sessions. Post-completion OPT is for those students who have completed their degree programs and require working at least 20 hours per week. Ph.D. candidates can apply for post-completion optional practice training if they are ABD (all but dissertation) and not simultaneously enrolled as students. The document required to establish employment eligibility to employers is an Employment Authorization Document (EAD) issued by USCIS (Form I-688B or I-766). Optional practical training requires employment authorization from USCIS⁴. To obtain the necessary employment authorization document (EAD), the student must submit a Form I-538 request for practical training to the Designated School Official, who must certify and forward it to the USCIS, as well as endorse the Form I-20 for the student to submit with the Form I-765. Employment of this type may not commence until the student receives the EAD⁵.

Unforeseen Hardship

A foreign student faced with severe economic hardship, beyond his/her control, that could not have been anticipated upon application for admission to the United States, may apply to the USCIS for authorization to engage in any type of available employment under the following conditions:

1. On-campus employment is not available
2. Student has been granted authorization to work by the USCIS
3. Employment does not exceed 20 hours per week during academic semesters

This employment authorization requires an EAD issued by USCIS (see process under Optional Practical Training).

Contact our office to speak with a member of our Immigration Group.

¹ "On-campus" includes off campus work supervised by a professor or school official and funded by a fellowship, grant or contract between the student's institution and the off-campus employer.

² One month of practical training is allowed per each four months of approved study.

³ Optional practical training requires an employment authorization document (EAD) issued to the student by USCIS.

⁴ Foreign students who have completed coursework for a bachelor's, master's or doctoral degree and have met all degree requirements, are eligible to work for a total period of 12 months, less time spent prior to graduation in optional practical training (part-time work is

prorated, e.g. six months half-time = three months full-time). Post-curricular practical training must be completed no later than 14 months after completion of the approved academic program.

⁵ The filing of an EAD application is not sufficient to establish employment authorization, nor is a receipt from INS acknowledging that the application is being processed. Processing of I-765 applications should be expected to take 90 days.