

IMMIGRATION ISSUES IN HIGHER EDUCATION

Common Classifications, Specific
Problems, and Possible Solutions

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Reader's Guide

- P = policy, procedures, or practice problem or solution
- R = regulatory problem or solution
- S = statutory problem or solution

Students – Common Classes

- F-1 nonimmigrant student classification. Used primarily for full-time students in degree programs.
- J-1 nonimmigrant classification, student category. Used primarily for exchange students funded from non-personal sources in a degree programs or in a non-degree program “prescribed course of study.”

Students – Issues and Solutions

Issue. F and J require “nonimmigrant intent” or proof of intention to return home. (S)

Solutions

- Remove the nonimmigrant intent requirement for the F. (S) Has been under discussion for years.
- Interpret immigrant intent differently for the F. (P)
- Interpret nonimmigrant intent differently for the J. (P, S). The “exchange” nature of the Exchange Visitor Program assumes and requires an intent to return to the home country based on 20th century ideas of exchange. Rethink the nature of exchange and how it can be accomplished.

Issue. F-1 students may wish to convert to work classifications or to Lawful Permanent Resident (LPR or “green card”) after graduation. The lengthy wait and uncertainty caused by the current H-1B cap makes temporary work difficult, and the LPR process discourages sponsorship by employers. (S)

Solutions

- Provide access to H-1B or other temporary work status for graduates of U.S. colleges and universities. (S)
- Lengthen the Optional Practical Training (OPT) work time available to F-1 students. Current F-1 employment options are DHS constructs that are not established by statute and could be changed by DHS. (P,R)
- Streamline the LPR process for graduates of U.S. colleges and universities. (S)
- Most immigration legislation discussions over the past decade have included variations on these themes.

Issue. F-2 spouse and children cannot work, but J-2 spouses and children can. F-2 spouses sometimes spend years without meaningful paid work. They are denied the professional and cultural development and involvement in the U.S. working life common to their U.S. cohorts.

Solution.

- It would appear that DHS could authorize F-2 work permission as it has done for F-1 or J-2 work permission. (P,R)

Professors and Research Scholars – Common Classes

- J-1 Professor or Research Scholar (PRS) – 5-year limit
- J-1 Short-Term Scholar (STS) – 6 month limit
- J-1 Specialist - 1-year limit
- H-1B Temporary Worker – 6-year limit
- TN NAFTA – 1 year at a time
- O-1 Persons of Extraordinary Ability
- E-3 Australia Treaty – 1 year at a time

Prof/Res – Issues and Solutions

Issue. The J-1 has convoluted regulations on “bars” to participation that wreak havoc on teaching and research and that subject J-2 dependents as if they were the professor or researcher participants. This is currently the most serious issue in the PRS category.

Solutions.

- Remove the “6/12 month” and “2-year” bars. (P,R) These bars are entirely a construct of the DOS-EVP. DOS could change them easily. Higher education has advocated strongly for such changes.

Issue. J-1 “INA 212(e)” home country physical presence requirement was designed to require J participants to return home and prevent brain drain from the sending countries. 212(e) currently requires return to the *home* country. Several countries use it as a U.S. dollars cash cow by making almost all citizens subject but generously providing “no objection” waiver letters for a fee.

Solutions.

- Eliminate 212(e) or allow it to be met in countries other than the home country – example, in the European Union instead of a specific country in Europe. (S)
- Consider removing countries from the Skills List if they show “revolving door” application of 212(e). (P, but a long entrenched process.)

Issue. Nonimmigrant intent requires a showing of intention to return home.

Solution. Eliminate (S) or change the evaluation of (P,R) nonimmigrant intent to allow J scholars to get visas easier.

Issue. H-1B requires that the *employer* pay the higher of actual or prevailing wage. It does not permit the use of outside grant funding, home institutions monies, etc. to meet the required wage. (R)

Solution. Permit confirmed outside funds to count as part of the required wage, even if the H-1B employer does not issue the check. Establish proper safeguards to prevent abuse. (R)

Issue. There is no current nonimmigrant classification that meets all of the needs of higher education. Restrictions on funding, duration, employment, and broad academic activities construct the teaching, research, consultation and so on that are common for major academic research institutions. (S)

Solution. Create a new nonimmigrant classification (S) that

- is managed directly by the school, as the J is in SEVIS
- does not require nonimmigrant intent
- can be funded from multiple sources
- permits long-term (5-10 years), continuous, intermittent, or sporadic use without “bars” or similar penalties.

Issue. Visa applications abroad, lengthy security clearances, and the fear of rejection or delays prevent critical and important exchange from occurring. People are afraid to go to meetings or conferences or to visit family at home. (P,R)

Solution. Provide long-term visa stamps to students and scholars or provide for stateside application and granting of visas or preapproval for visas that will be granted abroad. DHS has the authority to make stateside processing possible in some manner. (P,R)

E-VERIFY AND SSN NO MATCH

Related but not the same.

- **E-Verify** is the newest name for the Basic Pilot and the Employment Eligibility Verification System (EEVS). Employers who participate must use only E-Verify to determine work permission for new employees.
- **E-Verify** depends to a large degree on SSN data for U.S. Citizens, and on DHS data and SSN data for aliens. Many of the relevant date bases have high error rates.

- **SSN No Match** is a mandatory regulatory implementation by DHS for all employers, and uses the SSA data for enforcement.
- **SSN No Match** situations unresolved for 93 days result in mandatory termination of the employee unless the employee can show alternate work permission documents that do *not* contain an SSN.

- A U.S. citizen presenting a passport or an alien presenting valid original documents could still show tentative nonconfirmation if there are errors in the E-Verify or SSN records. Result – need to show alternate work permission or possible termination from work.
- The acceptability of original documents for continued employment varies between E-Verify and the SSN No Match.

- Errors are common for foreign names with different naming conventions and alternate spellings, and for birth dates with “month or day first” confusion.
- Unresolved E-Verify or SSN errors can result in termination of the employee.

- The SSN application form assumes a first middle and last name and requires at least a first and last. The system will not accept a single name. Those with only one name must use that as the last name, but SSN will enter a default first name of “unknown.” No choice. The SSN card will forever show that the first name is unknown, not that it is nonexistent.

- The SSN system has character limits for names. If someone has a very long first, middle, and/or last name, the system may break or truncate the name or convert part of the name to an initial, thus creating a no match against valid ID documents such as the passport.

- Newly arrived international students and scholars will have high rates of initial nonconfirmation because their data has not yet “made the rounds” in the DHS and SSN databases.
- Newly arrived international students and scholars who apply for new SSNs will face the built in SSN No Match name issues mentioned above.

Imagine this first American experience for a newly arrived international faculty members, researchers, and students.

- New country, new language, new bureaucracy. Eager to “do things right.”
- E-Verify shows tentative nonconfirmed. SSN shows a No Match. In either case these recruited and invited international members or our academic community are told that it is their responsibility to “correct” errors they did not create in unfamiliar systems that they do not understand. They are threatened with termination if they do not do this by a specific deadline.
- This is not the “Welcome to America” message that our institutions want to send.