

Mobility: Immigration alert

December 2023

United States

USCIS updates Policy Manual for nonimmigrant student classifications

Executive summary

On 20 December 2023, U.S. Citizenship and Immigration Services ("USCIS") updated sections of its Policy Manual relating to international students. The updated Policy Manual provides clarity to F-1 and M-1 nonimmigrant students, U.S. educational institutions, and employers on multiple issues. These include USCIS' role in adjudicating applications for employment authorization, the ability to establish eligibility for F and M classifications when the nonimmigrant is a beneficiary of a PERM labor certification and/or immigrant visa petition, and employment opportunities with start-up businesses during periods of optional practical training ("OPT").

Background and analysis

The F and M nonimmigrant visa classifications are reserved for noncitizens seeking to study in the U.S. The F-1 visa classification is for noncitizens who enter the U.S. as full-time academic students at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program. The M-1 visa classification is for noncitizen students participating in vocational or other non-academic programs, other than language training programs.

The new guidance consolidates existing USCIS policy and intends to clarify the intricacies of the F and M visa classifications. The update to the USCIS Policy Manual is effective immediately and applies prospectively to applications filed on or after 20 December 2023.

The policy highlights include:

- ▶ General information on USCIS' role in adjudicating applications for employment authorization, change of status, extension of stay, and reinstatement of status for F and M students and their dependents.
- ▶ Requirements for F and M students to have a foreign residence they have no intention of abandoning. This requirement may be satisfied even when the student is the beneficiary of a PERM labor certification application and/or immigrant visa petition. The guidance explains that USCIS officers must consider all facts presented when determining eligibility.
- ▶ Guidance on F students seeking extensions of OPT with start-up businesses based on their Science, Technology, Engineering, and Mathematics ("STEM") degrees. The start-up business must adhere to an approved training plan, remain in good standing with E-Verify, provide compensation to the STEM OPT student on par to that provided to similarly situated U.S. workers, and assign resources to comply with the training plan, among other requirements.
- ▶ Detailed guidance for F and M students to ensure maintenance of status. Specifically, addressing issues of transferring of schools or programs and on-campus/off-campus employment options for F students.

What this means

The updated USCIS Policy Manual presents students, U.S. educational institutions, and employers with clear guidance to ensure compliance with the requirements of the F and M nonimmigrant visa classifications. It recognizes the need to



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provide opportunities for international students to pursue careers in the U.S. and underscores the importance of prioritizing STEM workforce development. Specifically, emphasizing that start-up businesses may expand their pool of new hires to include international students with a focus in STEM by demonstrating the ability to satisfy all regulatory requirements for STEM OPT employers despite being new, and oftentimes small, companies.

The updated guidance also recognizes international students' interests in pursuing long-term opportunities in the U.S. by clarifying that pursuing a PERM labor certification application or immigrant visa petition may not necessarily impact their eligibility for the F or M classifications. This presents employers who have invested in training international students with the possibility of retaining these employees on a long-term basis without risking their nonimmigrant status.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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