

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Office of Business Liaison

Public inquiries: Employer hotline 800-357-2099 Fax 202-305-2523 E-mail office.business.liason@usdoj.gov
Public information: Fax-on-demand 202-514-2033 Order INS Forms 800-870-3676 Website www.usdoj.gov/ins/

EMPLOYING 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 (US) as foreign students attending American educational institutions. F-1 and M-1 foreign students are issued Forms I-20 by the INS. J-1 foreign students are issued the United States Information Agency's (USIA) Forms IAP-66. Aliens may study in the US 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 US 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 US. 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 an American 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 US. However, there are some significant exceptions. F-1 students may be employed as follows:

- part-time on campus¹
- curricular practical training that is required for graduation or for which the approved institution gives credits
- optional practical training, either prior to or following graduation, for a maximum of one year for F-1 students and six months² 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.⁴ J-1 students are employable only to the extent and under the circumstances specified by the approved program sponsor on the Form IAP-66.
- severe economic hardship (see footnote 3), 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 INS 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 (US) by US 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, aliens 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 US (see footnote 3). There is an important distinction between eligibility to **work** and eligibility to **remain** in the US. 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 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 **6 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 INS (Form I-688B or I-766).

¹⁰ "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.

EMPLOYMENT OF EXCHANGE VISITOR STUDENTS (J-1)

Exchange visitor programs are arranged through the United States Information Agency (USIA). Although they may consist of US 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 that they are only employed during the period for which they have been approved to remain in the US.

Permissible employment, if any, should be indicated on the Form IAP-66 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 IAP-66 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 FOREIGN STUDENTS ADMITTED UNDER OTHER CLASSIFICATIONS

Nonimmigrants in the following categories, although permitted to pursue part- or full-time academic programs in the US, are not entitled or restricted by virtue of those studies alone to the employment opportunities available to F-1, M-1 or J-1 students. Employment of these individuals is governed by restrictions associated with the status in which they were admitted to the US.

EMPLOYMENT OF ACADEMIC STUDENTS (F-1)⁵

1. ON CAMPUS

2. PRACTICAL TRAINING

- **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 foreign student advisor (FSA) from the student's approved institution. Although the designated school official must notify the INS of the student's practical training on Form I-538, INS 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. The document required to establish employment eligibility to employers is an Employment Authorization Document (EAD) issued by INS (Form I-688B or I-766). Optional practical training may be *curricular*⁶ or *post-curricular*⁷. Both types of optional practical training require employment authorization from INS. 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 INS, as well as endorse the Form I-20 ID for the student to submit with the Form I-765. Employment of this type may not commence until the student receives the EAD.⁸
- 3. 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 US, may apply to the INS for authorization to engage in any type of available employment under the following conditions. This employment authorization requires an EAD issued by INS (see process under Optional Training).
- on-campus employment is not available
 - student has been granted authorization to work by the INS
 - employment does not exceed 20 hours per week during academic semesters

⁵ In addition to the options below, students maintaining lawful F-1 status may engage in internships with recognized international organizations (e.g. World Bank or United Nations) with written permission from their designated school officials. **NOTE:** The pilot program created by the Immigration Act of 1990, which allowed foreign students to work off campus for any employer who files a Labor Condition Attestation (LCA) with the US Department of Labor after completing a full academic year in good standing, expired on September 30, 1996.

⁶ Curricular practical training is optional practical training undertaken prior to graduation. It must be in the field of study and involve duties appropriate to the level of study.

⁷ Foreign students who have completed coursework for a bachelor's, master's or doctoral degree or 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. 6 months half-time = 3 months full-time). Post-curricular practical training must be completed no later than 14 months after completion of the approved academic program.

⁸ 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.

SPECIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN F-1 NONIMMIGRANT STUDENTS WHOSE MEANS OF SUPPORT COMES FROM INDONESIA, SOUTH KOREA, MALAYSIA, THAILAND, OR THE PHILIPPINES

By regulation, INS has temporarily suspended the applicability of certain requirements in 8 CFR 214.2(f)(9) governing on-campus employment for F-1 students whose means of financial support, as reflected in the students' Form I-20, is from Indonesia, South Korea, Malaysia, Thailand, or the Philippines.⁹ Until further notice, these affected students are exempted from the normal student employment requirements in order to continue their studies in the US. Under this temporary suspension, eligible F-1 students are permitted to exceed the normal 20-hour limit on both on-campus and off-campus employment, and to reduce their full course of study without violating their F-1 status. Specific provisions follow:

1. On-Campus Employment

F-1 students whose means of financial support, as reflected in their Form I-20, comes from Indonesia, South Korea, Malaysia, Thailand or the Philippines, and who seek to engage in on-campus employment because of severe economic hardship resulting from the current economic crisis, are authorized to work more than 20 hours per week while school is in session if their Designated School Official (DSO) notes on page 4 of both the school and student copies of the Form I-20 in the student employment box with the statement:

Approved for more than 20 hour per week of on-campus employment under the Special Student Relief authorization from (DSO shall insert the beginning date of employment) until (DSO shall insert the earlier of the last day of the student's program or one year from the beginning date of employment)

and signs and dates the notation. To obtain this on-campus employment authorization, students must demonstrate to their DSO that the employment is necessary to avoid severe economic hardship caused by the economic crisis taking place in one of the five specified countries from which their means of financial support is derived. **These students are permitted to reduce their normal course of study in order to accept such employment.** To be considered to be maintaining F-1 status, undergraduate students must remain registered for a minimum of 6 semester or quarter hours of instruction per academic term and graduate students must remain registered for a minimum of 3 semester or quarter hours of instruction per academic term for the period of authorized employment. The standard permitting full-time work on-campus when school is not in session or during school vacations will continue to apply until the regulatory provision is canceled.

2. Off-Campus Employment

With respect to the affected Asian students, applicability of the following regulatory requirements is suspended:

- The requirement that the student has been in F-1 status for one full academic year;
- The requirement that acceptance of employment will not interfere with the student's carrying a full course of study; and
- The requirement that the student's work authorization is limited to no more than 20 hours per week when school is in session.

F-1 students who must reduce their normal course of study as a result of accepting employment authorized by this notice will be considered to be maintaining F-1 status.

⁹ The currencies of these countries have experienced a sudden and severe drop in value over recent months relative to the US dollar