

# Know Your Rights

## *An International Student's Guide to Studying and Working in the United States*

Winter 2004

National Immigration Project of the National Lawyers Guild

Visit our Post 9/11 resource page for more information on similar issues

<http://www.nationalimmigrationproject.org/sept11/resources.htm#P2>

### OVERVIEW

The terrorist attacks of September 11, 2001 forever changed the American immigration landscape. As a consequence of new national security and immigration laws, international students now face a range of new, additional procedures and requirements before they can study in the United States. As an international student, you must be vigilant about monitoring the changes in immigration laws that affect you. Simple matters—like your course load or choice of off-campus job—might jeopardize your immigration status, threatening your ability to pursue a degree in this country and subjecting you to deportation.

This guide is an overview to the basic immigration laws that are relevant to international students. **It is not meant to substitute for your individual research but just to make you aware of areas that demand caution and care.** It is also vital for you to discuss the particular details of your situation with staff at the International Students' Office or similar institution at your educational institution. This document also provides links to websites that offer up-to-date information on changing immigration laws that might impact you.

#### *Some good websites that offer current information on international student immigration-related matters*

(note: these websites are not meant to provide you with definitive answers to your particular situation—always consult with a school official about your own case):

Harvard International Office: <http://www.hio.harvard.edu/>

University of California-Berkeley, Services for International Students and Scholars, Immigration information: <http://ias.berkeley.edu/siss/immigration/index.html>

National Lawyers Guild:

“Know Your Rights” Guide: [http://www.nlg.org/resources/know\\_your\\_rights.htm](http://www.nlg.org/resources/know_your_rights.htm)

## **DOCUMENTATION**

It is very important that you keep all of your documentation in order and current, as one expired document (for example, your passport) could render you “out of status”—that is, “illegal” in the United States. If you realize that you have an expired or invalid document, you should contact your International Student Advisor or one of the organizations mentioned below as soon as possible to explore all remedies.

### **Make sure that the following documents are in order:**

1. Valid passport
2. Unexpired student visa (stamped on your passport)
3. Proof of enrollment
4. Work authorization
5. Valid passports and visas for your family if they are in the United States with you.
6. Proof of financial support (bank statement) showing that you are able to support yourself while you are a student in the United States.
7. Preferably an additional form of identification, such as a driver’s license or even campus identification.

### **Documents you should carry with you at all times in case you are stopped and questioned by Immigration officers:**

1. Your valid passport containing your valid student visa stamp
2. Your student identification
3. Your work authorization
4. Phone number of an immigration attorney
5. Phone number of national and local organizations that can help you

You should make multiple copies of your documents, including notarized copies in case you lose your original documents or DHS takes them. However, you cannot carry your photocopied documents instead of the original as proof of your valid immigration status.

## **SEVIS and US-VISIT<sup>1</sup>**

As of August 1, 2003, the U. S. Government, along with all schools that admit international students and scholars, completed the implementation of SEVIS—The Student and Exchange Visitor Information System. This system enables the Government to maintain updated information on F-1 non-immigrant international students and J-1 Exchange Visitors and their F-2 and J-2 dependents. Much of the required information

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<sup>1</sup> This information comes from Harvard International Office, Harvard University, at [http://www.hio.harvard.edu/students\\_scholars/sevis.php](http://www.hio.harvard.edu/students_scholars/sevis.php) (last visited Dec. 1, 2003).

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has always been available to the Government, but has not been available in a database designed for this purpose. All non-SEVIS visa documents are no longer valid.

New F-1 students, J-1 students and J-1 scholars must register with their educational institution as soon as possible after arrival and NOT LATER THAN 30 days after the beginning program date on their visa documents. The educational institution must report F-1 and J-1 arrivals in SEVIS within 30 days of this start date or the students and scholars will be designated as “No Shows” in SEVIS and their records will be terminated. If they have not used the visa document to enter the United States, they will not be able to do so, and if they have used the visa document to enter the United States, they will be considered to be in this country illegally.

Students must register each semester for full-time study. The educational institution must report students in SEVIS who are not registered for full-time study within 30 days of the final date for registering. Each school has a different date. Please consult with your educational institution’s relevant office (such as the Registrar’s Office) and be sure to indicate you are an international student and this date is significant for visa verification purposes.

Students MUST NOT drop a course and become less than full time without PRIOR authorization from their educational institution, except for some extremely limited circumstances. Again, please check with your educational institution.

Students and scholars must report a name change and an address change to the relevant office at their educational institution and to the Department of Homeland Security within 10 days of the change. Students and scholars must notify the relevant office at their educational institution if they will complete programs earlier than expected or if they change their programs of study. SEVIS will ultimately be integrated into a larger monitoring system—the U.S. Visitor and Immigrant Status Indication Technology System (US-VISIT).

### **SPECIAL REGISTRATION**

“Special registration” requires certain non-immigrant men from particular countries to register with the United States government upon their arrival in the United States. Included countries are: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

Every person who was specially registered is subject to departure registration. Special Registrants must (1) depart only from specially designated ports and (2) comply with special departure processing, which involves an appearance before a Customs and Border Protection (CBP) officer. Turning in the I-94 or being processed by airline personnel does NOT satisfy this requirement.

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In December 2003, regulations were passed modifying the annual “re-registration” and, in some cases, interview requirements—but Special Registration has not ended and these modifications do not excuse past failure to comply with previous Special Registration requirements. Special Registration is being continually modified, so stay abreast of developments in this arena if you are a male citizen of one of the aforementioned countries.

Please see the National Immigration Project’s website for additional information on this:

<http://www.nationalimmigrationproject.org/sept11/resources.htm>

<http://www.nationalimmigrationproject.org/sept11/SpecialRegistrationHasNotEnded!.doc>

## **COURSEWORK**

F-1 students must be enrolled full-time during the entire academic year to maintain their international student status. Your school might have different requirements so make sure to contact your International Student Advisor (“ISA”) to find out the number of credits required to maintain status.

### **What is full time enrollment?**

- For undergraduate students, full-time enrollment is typically 12 credit hours per semester.
- For graduate students, full-time enrollment is typically 9 credit hours per semester.
- The credit hour requirements might vary from school to school, so contact your ISO to make sure that the numbers of credit hours you are taking is sufficient to maintain full time enrollment at your school.
- If you are in your final semester of study, you may enroll in less than 12 credit hours if those are the only credit hours you need to graduate. You will still be considered a full time student for immigration purposes.

### **What happens if I fail a class?**

- If you fail a class, even though you might not earn the credit towards graduation, you are still considered to be a full-time student for immigration purposes.

### **What happens if I drop a class?**

- If you drop a class and fall under 12 credit hours, you will most likely no longer be considered a full time student and fall out of status.
- Make sure to contact your ISA before you decide to drop or even change your classes.

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## **Do I have to take classes during the summer or the holidays if I want to stay in the US?**

- You can still stay in the United States during the summer without taking classes, as long as you are not employed either on or off campus. (See Employment section)
- After you graduate, you have 60 days to prepare to travel back to your home country.

## **What changes in study or degrees do I have to report to my school?**

- If you are planning to change classes, change majors, drop a course, or finish one degree and start another—you must report these changes to your educational institution or ISA.

## **What must I do once I complete one degree and wish to start a new degree?**

1. Contact your educational institution or ISA to let them know that you completed your degree and wish to start another.
2. Within 15 days of starting your new degree bring the following documents to your ISA:
  - a. A complete form I-538
  - b. A completed financial certificate
  - c. A Valid passport
  - d. Proof that you completed your initial degree (diploma, transcript)
3. At that time, your ISO will issue you a new I-20 Form which will be sent to USCIS.

## **What should I do if I failed to maintain full-time student status?**

- Contact your educational institution, the ISA at your school, or your immigration attorney.
- Even if you are out of status, there might be options to reinstate you into full-time status and prevent deportation, although it is now getting more difficult to get reinstated.

## **EMPLOYMENT**

As a full-time international student, you have the right to be employed under certain conditions. It is important for you to make sure that you are not working more hours than permitted. It is also important for you to ensure that you are allowed to work off campus and that you have proper work authorization from your international student advisor (“ISA”). International students who engage in unauthorized employment may be deported. If you are a J-1 student, much of this information still pertains to you, but contact your international student advisor (ISA) or visit the USCIS website (<http://uscis.gov/graphics/index.htm>) for more detailed information.

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- Before you seek or accept on or off campus employment, make sure to have a valid Social Security Number. If you do not have a Social Security Number, contact the Social Security Office at (800) 772-1213 and submit an application that you can download at <http://www.ssa.gov/online/ss-5.html>. It is not legal for you to be employed without a valid Social Security Number.
- You and your employer must also fill out an Employment Verification Form (INS Form I-9) by the first three days of your employment. You will also require your passport and visa documents, proving that you are authorized to be employed in the U.S. to complete the I-9 form. Each time you receive a renewal of your work permission, or if you change employers, the I-9 must be updated.

### **I. Employment during first school year as F-1 student:**

#### **A. On Campus Employment during your first nine months as an F-1 Student**

- You are allowed to work up to 20 hours per week **on-campus** the entire time that you are an international student. You cannot work more than 20 hours per week.
- If choose to work on campus, make sure to get a letter from your ISA certifying that your employer is an on campus employer.
- You should get the employment authorization from your school, not from your employer. You and your employer must fill out the Employment Verification Form mentioned above.
- If you do not get work authorization and the letter certifying that your employer is an on campus employer, you might lose your F-1 student status.

#### **B. Off-Campus Employment**

- **You cannot work off-campus during the first nine months as an international student.**
- After nine months of full-time enrollment, you may only work off campus through the Optional Practical Training (OPT) program or through the Curricular Practical Training Program (CPT). You are also eligible for an internship with an international organization (for example, the International Monetary Fund). See your ISA or visit the USCIS website (<http://uscis.gov/graphics/index.htm>) for more details on these training programs.

### **II. Summer/ Holiday Employment as an F-1 student:**

After completing your first year as a full-time student you may seek employment either on or off-campus under the following conditions:

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**A. If you would like to work on campus during the summer**

- You may be employed on campus as long as you are enrolled in a class.
- You may work up to 40 hours per week during the summer or during vacations.
- The same regulations apply as for on campus employment mentioned above.

**B. If you would like to work off campus:**

- You can work off campus through the Optional Practical Training (OPT) Program or the Curricular Practical Training Program (CPT). The employment must directly relate to your studies and your employer must qualify for the program as well.
- You must submit your work authorization request for OPT or CPT to your ISA office. Make sure to do it well ahead of time as this process can take a long time.
- During the summer, you are authorized to work for 40 hours per week in the OPT or CPT program.

*\*Any time that you work in the Optional Practical Training Program will be deducted from the one year total that you are allowed to participate in this program while you are an international student.*

**III. Employment options after your first year of study as an F-1 student:<sup>2</sup>**

- After you complete your first year of study, you are eligible to do your OPT or CPT during the school year and holidays or you may engage in part-time on campus employment. You must still secure the proper work authorization and follow the regulations mentioned above.

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<sup>2</sup> **Off-campus employment after completing the first year of studies in some cases can be obtained by showing economic hardship:**

1. If you experienced unpredictable economic hardship, you may be able to secure an off-campus work authorization to help you cover your expenses.
2. You must ask your ISA for an application as soon as possible. USCIS usually takes three to four months to issue work authorizations for economic hardship.
3. You must also make a strong effort to get employment on campus before you apply for authorization to work off campus.
4. Economic hardship employment is only available to you after your first year.

#### **IV. Employment after you graduate:**

- If you would like to be employed after you graduate, make sure to apply for OPT while you are still enrolled.
- Once you graduate, it is too late to apply. After graduation you have one year of OPT available unless you used up your OPT time earlier.

#### **V. Employment options as a J-1 Student:**<sup>3</sup>

J-1 students face similar employment regulations. J-1 students are eligible for the following types of employment if registered, studying full-time, and in good academic standing; alternatively, in the case of Academic Training, have completed the program of studies.

#### **Employment required by a scholarship, fellowship, or assistantship.**

- This kind of work would occur on campus with the university as the employer. It would normally be noted on your DS-2019 or IAP-66 and no additional authorization documentation would be necessary.

#### **On-campus employment unrelated to study.**

- The regulations, in allowing for jobs on campus that are unrelated to study, stipulate that the work be done on the university's premises.

#### **Off-campus jobs to meet urgent, unforeseen need ("economic hardship").**

- The regulations stipulate that you must demonstrate that you have serious and urgent financial need that you did not foresee when you became a J-1 student or when you enrolled at your university. Your ISO should have a budget sheet for you to complete to help demonstrate this need.

#### **Academic Training**

- Academic training is designed to provide you with employment experience to complement your program of study in the United States. Therefore the work must be directly related to your field of study and it must be appropriate for someone with your level of education. You may engage in academic training during your degree program and/or after the completion of your degree program as long as the total amount of training does not exceed certain time limitations.
- You are eligible for student employment if you are registered, studying full-time, and you are in good academic standing.

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<sup>3</sup> This information comes from Harvard International Office, Harvard University, at [http://www.hio.harvard.edu/students\\_scholars/student\\_employment/j1\\_emp\\_options.php](http://www.hio.harvard.edu/students_scholars/student_employment/j1_emp_options.php) (last visited January 18, 2004).

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**VI. Students who did not comply with the employment guidelines:**

- If after reading these guidelines, you realize that you did not follow the employment regulations for your status, make sure to contact your ISO or an immigration attorney. Based on your particular circumstances, you might be able to be reinstated (regain your status) or prevent deportation proceedings.

**REINSTATEMENT**

If you discover that you have violated one of the provisions of the immigration laws pertaining to international student status, contact your international student advisor immediately. In some cases, your international student advisor may be able to fix the problem without a complex process. In other situations, you may need to proceed through the process of “reinstatement.” Reinstatement is an extraordinary remedy that re-regularizes status for an international student who has violated certain legal rules.

In turn, reinstatement is not available to all international students—certain violations of the immigration laws pertaining to international students make you ineligible for reinstatement. For example, the failure to file for reinstatement within a particular time period may render you ineligible for reinstatement; undertaking unauthorized employment may also render you ineligible for reinstatement. [This list is not a comprehensive list of the eligibility requirements for reinstatement.](#) The rules on reinstatement are very complex, so if you think that you have not fully complied with the immigration laws for international students, consult an international student advisor immediately as time will be of the essence in the event that you will need to proceed through the reinstatement process.

**INTERNATIONAL STUDENTS’ EMPLOYEE RIGHTS IN THE WORKPLACE:**

Whether you work on or off campus, you are protected by the same laws that protect American citizens in the workplace. If you feel that you are being discriminated against because of your race, religion, ethnic background or due to your immigration status, you are entitled to file a complaint with the Equal Employment Opportunity Commission. You are also protected under the US laws concerning sexual harassment in the workplace and should also file a complaint with the EEOC under those circumstances. To know more about your workplace rights and to file a complaint, visit the EEOC website at [www.eeoc.gov](http://www.eeoc.gov) or call 1-800-669-4000.

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**INTERNATIONAL STUDENTS MUST FILE TAXES**

Whether or not you were employed or earned money in the United States, you are still required to file your taxes as an international student. Although you are exempt from paying Social Security taxes for the first five years that you are in the United States, you do have to pay the remaining applicable taxes. There is now an Internal Revenue Service (IRS) number especially for international tax questions at 1 (215) 516-2000 and a general IRS information hotline at 1 (800) 829-1040. Contact your ISA for more information if you want to file your taxes or forgot to do so. Failure to file your taxes can render you out of status.

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