



OPTIONS FOR FOREIGN STUDENTS IN THE UNITED STATES

By Eileen Martin*



FOREIGN STUDENTS IN THE UNITED STATES fall into a range of categories: there is a general one (F-1), another specifically for vocational students (M-1) and yet another category for exchange visitors (J-1) into which students often fit. It is critically important to recognize that foreign students in almost any other status from A to V can attend most schools, if that attendance is ancillary to their primary reason for being in the United States.

Dependents of work permit holders (TD, L-2, E, or H-4) often attend school, and need no special permission to do so. Work permit holders may also attend school, and even earn additional degrees, as long as they comply with all requirements of their status.

The visitor categories (B-1 and B-2) are a bit different than other categories for students. B-2 (Visitor for Pleasure) is an appropriate category for students entering the United States to enroll in an avocational or recreational school.¹ This works for students attending a school that has not been approved by the Department of Homeland Security for enrollment of F-1 foreign students. These schools are generally non-degree-granting schools, such as cooking schools.

B-2 children are not permitted to attend school. However, some schools are less attentive to this issue and enrol B-2's. Interestingly, illegal aliens must be admitted to public schools if they are otherwise eligible² and, in recent years, civil rights organizations have attempted to convince schools to refrain from asking any questions about status, suggesting it could be seen as intimidating to those who may be eligible for public education.

J-1 status for exchange visitors encompasses a great variety of aliens, including professors, researchers, au pairs and students. This status depends on parameters approved by the U.S. Department of State for a particular program. The exchange program determines whether or not the foreign national fits the parameters. If so, it issues a document: Form DS-2019. The foreign student uses that document to obtain a visa and to obtain admission to the United States. This process is streamlined and usually without much government bureaucracy.

The downside to using a J-1 is substantial. A J-1 can only be admitted for the duration of her program, which varies depending on the parameters of the approval from U.S. Department of State. Further, depending upon the source of funding for the exchange program, the foreign student may be subject to a two-year foreign residency requirement, which is waived only in very limited circumstances. Even sponsorship by an citizen spouse can only result in a waiver being approved if extreme hardship can be demonstrated to the American spouse or children. I

often describe extreme hardship as something everyone would hope not to have, as it usually is found in cases of medical, psychological or financial hardship that is severe.

F-1 status is what most people think of as student status. Its process was tightened up after several of the 9/11 terrorists were found to have entered the country with this status. F-1 students are monitored through their Designated School Officials (DSO's) who must verify their continued attendance regularly.

F-1 status is for high school students attending private school, attending one year of tuition-paid public school, or for students attending an approved degree- diploma- or certificate-granting post-secondary program. Surprisingly, F-1 status can be obtained for Beauty Schools, Language Schools, and dozens of Kaplan Test Prep locations. In order to maintain F-1 status, the alien must maintain full-time student status for the duration of the program.

Probably the best and most attractive aspect of F-1 status is the availability of Curricular practical training (CPT) or optional practical training (OPT). Being able to work to complete credits (CPT) or to get an open work permit to work in your field after graduation (OPT) is very attractive. It is the main reason I counsel students who may otherwise qualify as dependents of their parents to obtain F-1 status. OPT work can lead to H-1B sponsorship and ultimately, green card sponsorship.

M-1 is a category used infrequently. A common use for the M-1 is for aliens attending flight schools. It offers a shorter time of study for schools which have qualified for the attendance of students of such status.

When faced with a foreign national's desire to study in the United States, there are many factors to consider. A student may qualify for several different non-immigrant categories, and selecting the proper category can make a big difference.

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¹ 9 *Foreign Affairs Manual* 41.31 N14.8.

² *Plyler v. Doe* 457 U.S. 202 (1982).