

Blog Post

SOS: Students Stuck Outside

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A new and unexpected policy change will cause problems for students who plan to process visa applications from abroad. Foreign nationals who overstay their student visas could be barred from re-entering the U.S. under a draft policy memorandum issued by the U.S. Citizenship and Immigration Services (USCIS) on May 11. The new policy, which will supersede existing policy that's been in place for nearly two decades, tightens rules for foreign students and exchange visitors by changing how immigration authorities calculate "unlawful presence" in the United States. The proposed policy will count significantly more days as time illegally spent in the United States, and will result in a surge of students violating their terms of admission and becoming illegally present in the United States. The policy is set to take effect on August 9, 2018.

Under current immigration policy, the clock to compute unlawful presence begins ticking only from the day after immigration officials discover a status violation and issue a formal notice of such findings, or after an immigration judge orders the foreign national excluded, deported, or removed from the United States, whichever date comes first. Most often, USCIS detects a status violation—such as engaging in authorized employment or failing to remain enrolled in the minimum number of course credits—while adjudicating a request for another visa or immigration benefit made by or on behalf of the foreign national.

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The Agency's new policy provides that international students and exchange visitors on F, J or M visas will now begin racking up "unlawful presence" from "the day after" the student no longer pursues the course of study or completes the course of study (including any periods of Optional Practical Training) through which they were authorized to enter the U.S. Visa overstayers will not be eligible to apply for a new visa or change status while in the United States. Violating this law could render international students unable to enter the U.S. in the future. Remaining unlawfully present in the U.S. for 180 days can result in a bar from entering the U.S. for a minimum of three years. Anyone who accrues more than one year of unlawful presence in the U.S. can be subject to a ten-year bar.

The proposed change will create obstacles for foreign nationals looking to remain in the United States after graduation to accept employment. With more days calculated toward unlawful presence, more students are expected to fall target to the Administration's enforcement efforts. "USCIS is dedicated to our mission of ensuring the integrity of the immigration system. F, J, and M non-immigrants are admitted to the US for a specific purpose, and when that purpose has ended, we expect them to depart, or to obtain another lawful immigration status," according to an official statement released by USCIS Director, L. Francis Cissna.

The draft policy is currently open for public comment until June 11, 2018. Akerman's team of immigration attorneys are available to provide further guidance and details for those interested in more information.

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