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Immigration News: USCIS New Policy on Unlawful Presence for F, J and M Nonimmigrants

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Effective August 9, 2018, U.S. Citizenship and Immigration Services (USCIS) implements a new and more restrictive immigration policy on the accrual of unlawful presence for F, J and M nonimmigrants and their dependents, admitted/authorized to stay for duration of status (D/S) or until a specific date. This USCIS new policy is to update Chapter 40.9.2 of the USCIS Adjudicator's Field Manual.

F and M are student visas. An F visa is for an academic student to study in the U.S. at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program. An M visa (vocational student) is participating in vocational or other nonacademic programs, other than language training. **J is an exchange visitor visa** for participating in an approved program for teaching, instructing or lecturing,

studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.

For nonimmigrants above who failed to maintain immigration status before August 9, 2018, their unlawful presence starts from August 9, 2018, unless they have previously started accruing unlawful presence on the earliest day of the following:

- 1. The day after DHS denied the request for an immigration benefit, if DHS made a formal finding that the individual violated his or her nonimmigrant status while adjudicating a request for another immigration benefit;
- 2. The day after their I-94 expired; or
- 3. The day after an immigration judge or in certain cases, the Board of Immigration Appeals (BIA), ordered them excluded, deported, or removed (whether or not the decision is appealed).

For nonimmigrants above who failed to maintain nonimmigrant status on or after August 9, 2018, their unlawful presence starts on the earliest day of any of the following:

- 1. The day after they no longer pursue the course of study or the authorized activity, or the day after they engage in an unauthorized activity;
- 2. The day after completing the course of study or program, including any authorized practical training plus any authorized grace period;
- 3. The day after the I-94 expires; or
- 4. The day after an immigration judge, or in certain cases, the BIA, orders them excluded, deported, or removed (whether or not the decision is appealed).

A dependent's status (F-2, J-2 and M-2) ends when the nonimmigrant status of the F-1, J-1 or M-1 ends. Alternatively, a dependent's status in F-2, J-2 or M-2 may end due it his/her own's activities or situations.

The accrual of unlawful presence for individuals present in the United States who are not in F, J, or M nonimmigrant status remains unchanged.

Unlawful presence affects an individual's immigration benefits. Generally, individuals subject to a time bar are ineligible for a visa, admission, or Green

Card unless they have an approved waiver or another form of relief. For examples, an individual with over 180 days of unlawful presence in a single stay may, upon departing the US, trigger a **3-year or 10-year bar** from entering the U.S. Individuals who have over a year of unlawful presence who either reentered or attempted to reenter the US may trigger a **permanent bar** to inadmissibility.

For additional information on USCIS new policy on unlawful presence for J, F and M nonimmigrant status, please see

https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/AccrualofUnlawfulPresenceFJMNonimmigrantsMEMO v2.pdf

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This article is intended for informational purposes only, and should not be relied on as legal advice or attorney-client relationship. By Aik Wan Kok, Lawyer USA Immigration Services, at Tiya; Tel: 703-772-8224 & info at tiyaimmigration dot com; Direct dial from abroad: 001-703-7728224; https://www.tiyaimmigration.com; http://tiyalaw.blogspot.com; https://immigrationresource.net
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