

Mobility: Immigration alert

December 2023

United States

USCIS updates Policy Manual for nonimmigrant student classifications

Executive summary

On 20 December 2023, U.S. Citizenship and Immigration Services ("USCIS") updated sections of its Policy Manual relating to international students. The updated Policy Manual provides clarity to F-1 and M-1 nonimmigrant students, U.S. educational institutions, and employers on multiple issues. These include USCIS' role in adjudicating applications for employment authorization, the ability to establish eligibility for F and M classifications when the nonimmigrant is a beneficiary of a PERM labor certification and/or immigrant visa petition, and employment opportunities with start-up businesses during periods of optional practical training ("OPT").

Background and analysis

The F and M nonimmigrant visa classifications are reserved for noncitizens seeking to study in the U.S. The F-1 visa classification is for noncitizens who enter the U.S. as full-time academic students at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program. The M-1 visa classification is for noncitizen students participating in vocational or other non-academic programs, other than language training programs.

The new guidance consolidates existing USCIS policy and intends to clarify the intricacies of the F and M visa classifications. The update to the USCIS Policy Manual is effective immediately and applies prospectively to applications filed on or after 20 December 2023.

The policy highlights include:

- ▶ General information on USCIS' role in adjudicating applications for employment authorization, change of status, extension of stay, and reinstatement of status for F and M students and their dependents.
- ▶ Requirements for F and M students to have a foreign residence they have no intention of abandoning. This requirement may be satisfied even when the student is the beneficiary of a PERM labor certification application and/or immigrant visa petition. The guidance explains that USCIS officers must consider all facts presented when determining eligibility.
- ▶ Guidance on F students seeking extensions of OPT with start-up businesses based on their Science, Technology, Engineering, and Mathematics ("STEM") degrees. The start-up business must adhere to an approved training plan, remain in good standing with E-Verify, provide compensation to the STEM OPT student on par to that provided to similarly situated U.S. workers, and assign resources to comply with the training plan, among other requirements.
- ▶ Detailed guidance for F and M students to ensure maintenance of status. Specifically, addressing issues of transferring of schools or programs and on-campus/off-campus employment options for F students.

What this means

The updated USCIS Policy Manual presents students, U.S. educational institutions, and employers with clear guidance to ensure compliance with the requirements of the F and M nonimmigrant visa classifications. It recognizes the need to



EY Law LLP

provide opportunities for international students to pursue careers in the U.S. and underscores the importance of prioritizing STEM workforce development. Specifically, emphasizing that start-up businesses may expand their pool of new hires to include international students with a focus in STEM by demonstrating the ability to satisfy all regulatory requirements for STEM OPT employers despite being new, and oftentimes small, companies.

The updated guidance also recognizes international students' interests in pursuing long-term opportunities in the U.S. by clarifying that pursuing a PERM labor certification application or immigrant visa petition may not necessarily impact their eligibility for the F or M classifications. This presents employers who have invested in training international students with the possibility of retaining these employees on a long-term basis without risking their nonimmigrant status.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com

Stephanie Lipstein, Partner
+1 514 879 2725
stephanie.lipstein@ca.ey.com

Author: Mehrnaz Sepehri, Senior Associate Attorney, Manager
+1 416 932 4906
mehrnaz.sepehri@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Nadia Allibhai, Partner
+1 613 598 4866
nadia.allibhai@ca.ey.com

Melanie Bradshaw, Partner
+1 416 876 6671
melanie.bradshaw@ca.ey.com

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

Follow up on Twitter @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit EYLaw.ca.

© 2023 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 012038-23Gb1

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/en_ca