New Department of Homeland Security Policy on “Unlawful Presence”

On August 9, 2018, the Department of Homeland Security (DHS) implemented a new policy [1] regarding “unlawful presence” for F-1 students and J-1 exchange visitors, as well as for their dependents. The concept of “unlawful presence” is not new, but it rarely applied to F-1 students and J-1 exchange visitors who were admitted for “duration of status” (“D/S” as noted on their I-94 [2]).

DHS will now begin tracking “unlawful presence” if F-1 students and J-1 exchange visitors violate the terms of their immigration status. Under the new policy, DHS will now start counting days of unlawful presence beginning the day after a violation of status occurred. If the violation of status occurred before August 9, 2018, the days of unlawful presence are counted beginning on August 9, 2018, when this policy took effect.

There is the potential for F-1 students and J-1 exchange visitors to be barred from re-entering the U.S. for either three years or ten years, depending on how much “unlawful presence” accumulates. Students or scholars with more than 180 days of unlawful presence will be barred from readmission to the U.S. for three years. Students or scholars who accrue a year or more of unlawful presence will be barred from readmission to the U.S. for 10 years.

Now that this new policy is in effect, it is more important than ever to be aware of the requirements of your immigration status and of the expiration dates of your immigration documents. Here are some steps that F-1 students or J-1 exchange visitors can take to avoid immigration status violations.

Students:

- Enroll in the appropriate number of credit hours each term.
- Pay close attention to your I-20 or DS-2019 end date. Apply in advance for an I-20 or DS-2019 extension if needed.
- When you move to a new U.S. address, update your current address in Wolverine Access immediately.
- Understand and comply with F-1/J-1 regulations for on-campus and off-campus employment. Do not work without the appropriate employment authorization.
- If you apply for, or are approved for, F-1 Optional Practical Training:
  - Do not work until you have received your EAD (Employment Authorization Document). Remember that if it is past your I-20 end date, but you have not yet received your EAD, you are not authorized
to work on or off campus.
• Report your OPT employment using the International Center’s OPT reporting page [5].
• If you have questions, ask in advance. The International Center has walk-in advising hours [6] most weekdays between 1:00 and 4:00 p.m.
• If you think you may have violated your F-1 or J-1 status, contact the International Center immediately so that we can advise you about possible options.

It is very important that you understand that you are ultimately responsible for maintaining your immigration status. The International Center is here to help you understand and navigate the complexities of immigration regulations and policies.

Scholars:

• Review the International Center’s information on maintaining status for J-1 Scholars [7] and follow those guidelines.
• Make sure that your research, teaching or observation matches the objectives listed on your DS-2019.
• When you move to a new U.S. residential address, update your current address in Wolverine Access immediately.
• Do not engage in any employment, paid or unpaid, that is not with the department listed on your DS-2019, without approval in advance from the International Center.
• Notify the International Center by submitting a “departure form” if your University of Michigan work (the research, teaching or observation listed on your Form DS-2019) ends earlier than your DS-2019 end date.
• If you have questions, ask in advance. The International Center has walk-in advising hours [6] most weekdays between 1:00 and 4:00 p.m.
• If you think you may have violated your J-1 status, contact the International Center immediately so that we can advise you about possible options.

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F-2 and J-2 dependents

It is important to understand and review maintenance of status requirements for dependents if you have an F-2 or J-2 dependent because dependents can also accrue unlawful presence.

• Maintaining F-2 status [8]
• Maintaining J-2 status [9]

We will continue to monitor this policy and to work with those students, scholars, and dependents in special situations (e.g.: reinstatement or change of status applications).

We are glad you are here!

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