Recent Immigration Actions:

USCIS & DOS Policies on Unlawful Presence for F/J/M

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Overview

- US Citizenship & Immigration Services (USCIS) published a new policy effective August 9, 2018
  - Officers able to determine that an applicant is "unlawfully present" – For F, J, & M categories, calculation may now reflect historical actions
- US Department of State (DOS) has updated their guidance to visa officers with similar language
- Critical to know and follow all immigration rules!

What is 'Unlawful Presence'?

***Legal Determination*: When a person is present in the US without authorization**

- Official action/notice from government agency
- Based upon limited & verified scenarios –
  - *Overstay*: Remaining beyond status expiration
  - *Court Order*: Immigration judge issues order for removal, deportation, or exclusion from US
  - *USCIS Ruling*: Denial, citing status violation

Accrual & Consequences

- *Duration of Status (D/S)*: Overstay does not apply; For F/J, USCIS or judicial ruling has been required
- Once determined, Unlawful Presence is accrued for every day present in US without valid authorization
- Consequences for Unlawful Presence are severe!
  - Must apply in home country for any US visa
  - After 180 days, subject to **3-year bar** on entry
  - After 1 year, subject to **10-year bar** on entry

New USCIS Policy: Aug 9, 2018

- Policy Memo issued in June; Finalized in August: **"Accrual of Unlawful Presence and F, J, & M Nonimmigrants"** [PM-602-1060.1]
- No changes to Unlawful Presence calculations for other nonimmigrant categories: Accrual begins day after USCIS ruling, judge's order, or status expires
- Broader scope for students & exchange visitors!
  - Unlawful Presence triggered by status violation
  - F-2 & J-2 dependents follow F/J determination

Accruals for F, J, & M

- USCIS may review government systems, applicant details, and statements to determine status validity
- If a violation is determined, accruals are now calculated based on **timing of the event**, *not the determination date from USCIS*
  - For violations prior to 8/9/18, accrual of unlawful presence begins from August 9th
  - For violations after 8/9/18, accrual begins from date of the violation, despite USCIS timing

New DOS Policy Guidance

- Foreign Affairs Manual, updated August 9, 2018: **"Individuals Unlawfully Present – Grounds & Application"** [9 FAM 302.11-3 (A) & (B)]
- Ineligibility for a US visa if the applicant has been "unlawfully present" for more than 180 days
- Similar provisions target previous F, J, or M status
  - 8/9/18: Accruals calculated from status violation
  - Prompts data comparison of SEVIS, I-94, etc.

Implications of new policies

- Uncertainty around USCIS & DOS interpretations
  - Officers have broad discretionary authority
- No notice or awareness of some minor violation(s)
  - Previous activities remain subject to review
  - Difficult to anticipate consequences in advance
- Options to correct common errors are more risky
  - Reinstatement or travel to regain F-1 status; Delays likely to result in a 3- or 10-year bar

Unlawful Presence NOT accrued:

- During qualified F-1 & J-1 grace periods
  - 30 days *prior to* program start date (F & J)
  - 30 days (J) or 60 days (F) *after* completion date
  - Reduced for LOA, withdrawal, separation, etc.
- Enrolled full-time, or authorized for reduced load
- Annual vacation periods, if enrolling next term
- Between study, for Change of Level or Transfer
- Authorized periods post-completion employment

Maintenance of F-1/J-1 Status I

- Pursue "full course of study" at authorized school
  - Report to ISO promptly upon arrival to UR
  - Enroll timely each term, for FT credits/equiv.
  - Maintain normal progress toward degree reqs.
- Obtain authorization for Reduced Course Load, prior to dropping below full-time enrollment
- Extend program prior to current completion date
- Report changes in address to ISO within 10 days

Maintenance of F-1/J-1 Status II

- Work ONLY with valid & active authorization
  - Limit on-campus employment to 20 hrs/wk during academic term; Full-time at breaks
    - *F-1*: Valid I-20 documents work permission
    - *J-1*: All work activities reported via SEVIS
  - Obtain off-campus permission: CPT, OPT, AT
  - Maintain all employment reporting obligations
  - Adhere to unemployment limits during OPT

Be Aware / Plan Ahead / Ask

- Critical to know and follow immigration rules!
  - Requirements, permissions, & reporting
  - Check validity of immigration documents
  - Life happens, plans change … talk to ISO!
- Continued monitoring of policy & case scenarios
  - Much unknown about USCIS implementation
  - Support & advocacy from ISO, as viable