



October 23, 2020

Sharon Hageman
Acting Regulatory Unit Chief, Office of Policy and Planning
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536

RE: DHS Docket No. ICEB-2019-0006-0001, Comments in Response to Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

Dear Acting Regulatory Unit Chief Hageman:

The Alliance for International Exchange, an association of 90 nongovernmental organizations comprising the international educational and cultural exchange community in the United States, writes to comment on the U.S. Department of Homeland Security (DHS) proposed rule dated September 25, 2020 entitled the "Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media." While we support the overall goals of upholding the rule of law and strengthening national security, we have significant concerns with the proposed rule. As a result, we urge DHS to withdraw the rule and maintain the current duration of status policy.

First, the proposed rule uses faulty analysis by justifying admission period limits with the DHS entry/exit overstay reports. These reports not only measure overstays, but also those visa holders that cannot be verified to have left the country or changed status. As such, the reports unduly inflate overstay rates and are problematic in determining policy changes like this one.

If adopted, the proposed rule would create significant uncertainty for F-1 and J-1 participants, sponsors, and host institutions. In the rule, the approved admission period for each international student and exchange visitor could be shortened at the discretion of the customs officer at the point of entry. Not only would this change make it much more difficult for sponsors to manage these programs, but it would also make these programs unreliable for the U.S. institutions/companies and families that host the participants. Exchange visitors could lose their work opportunities because of the changes. In addition, the new extension of stay process in the rule would create additional uncertainty. The U.S. Citizenship and Immigration Services (USCIS) already struggles with processing challenges. The proposed rule would only increase its burdens, thereby making timely extensions less likely.

Moreover, the extension of stay process required in the proposed rule would add a financial burden to international students and exchange visitors in addition to the uncertainty. For example, a participant in the J-1 teacher program can be admitted for an initial three year visa with the opportunity to extend for an additional two years. Under the proposed rule, the J-1 teacher would be given a maximum admission period of four years, which is contrary to the U.S. Department of State's regulations. Under the new rule, the teacher would either have to file an extension of stay directly with USCIS to remain in status or return home to apply for a new visa. Both of these options present significant expenses to the participant that are not required in the current regulations. Should DHS adopt a new rule, such a rule should explicitly defer to F-1 and J-1 program regulations where the new rule is in conflict with those regulations.

DHS seems to be under the impression that the proposed rule would not affect a range of J-1 programs. On page 60583, DHS states "short-term scholar, intern, specialist, secondary school student, college and university student, summer work travel, camp counselor, and au pair programs would not be affected by the proposed rule as the programs they offer are too short to be affected." Given that stated assumption, DHS should explicitly exempt these programs.

Notably, English language learners (ELL) are greatly impacted by this proposed rule. Restricting English learners to a lifetime aggregate of 24 months of study does not account for different rates of learning or the demand for the high-quality, accredited English language programs the U.S. provides. In the long term, this proposed rule makes it more challenging for U.S. English language and degree programs to be sustainable, especially given that language programs play a vital role in the path of a degree-seeking student. As the number of college-aged students in the United States declines, the international market is more competitive than ever before. In fact, DHS acknowledges the possibility that the proposed rule could result in fewer international students participating in exchange programs in the United States. International students contributed \$41 billion to the U.S. economy and supported over 458,290 jobs during the 2018-2019 academic year. Given the economic downturn, the Federal government should seek instead to facilitate students coming to the United States. The best way to do that is to maintain the current duration of status policy.

The current duration of status framework provides much needed flexibility and adaptability for program sponsors and administrators to operate F-1 and J-1 programs. Instead, the proposed rule creates high hurdles for compliance during unprecedented and fast-changing circumstances. The rule will also require extensive administrative effort to maintain student status. Additionally, due to the cumbersome extension of stay process, many students may inadvertently fall out of status due to the frequent need for status adjustments with dire consequences for the students for years thereafter.

Under current guidelines, nonimmigrant foreign students and exchange visitors are two of the most monitored visa categories due to their enrollment in the Student and Exchange Visitor Information System (SEVIS). SEVIS is sufficient to accomplish DHS' goals of enhancing national security and enforcing immigration laws, making the proposed rule duplicative and unnecessary.

Lastly, DHS seeks to increase participation in the voluntary E-Verify program by penalizing employers through this rule who do not currently use that program. That is inappropriate. Treating some employers differently because they are involved in international exchange programs would be unfair and contradict Federal law.

F-1 and J-1 visa holders are critical for American communities due to their contributions to the U.S. economy, national security, and mutual understanding. The proposed rule changing the duration of status framework will discourage these participants from choosing programs in the United States. We urge that the proposed rule be withdrawn and admission for the duration of status remain in effect.

Sincerely,



Ilir Zherka
Executive Director