



July 19, 2007

Via email: [jexchanges@state.gov](mailto:jexchanges@state.gov)

United States Department of State  
Bureau of Educational and Cultural Affairs  
301 4th Street, SW  
Washington, DC 20547

AILA National Office  
918 F Street, NW  
Washington, DC 20004

Tel: 202.216.2400  
Fax: 202.783.7853

[www.aila.org](http://www.aila.org)

Jeanne A. Butterfield  
*Executive Director*

Susan D. Quarles  
*Deputy Director, Finance & Administration*

Crystal Williams  
*Deputy Director, Programs*

Re: Interim final rule on trainees and interns – **RIN: 1400-AC15**

Comments to Interim Final Rule “Exchange Visitor Program –  
Training and Internship Programs”

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) is a bar association of more than 10,000 immigration lawyers, and is the nation’s leading training and information-sharing organization in immigration law. Among other areas of activity, our members represent individual young people seeking J-1 training opportunities in the United States as well as U.S. organizations seeking to or willing to act as host companies to provide such training. AILA submits the following comments on the interim final rule published in the Federal Register on June 19, 2007 concerning trainee and intern exchanges.

AILA strongly supports policies that foster the expansion of international cooperation and the Department’s commitment to public diplomacy. As we emphasized in comments we submitted on June 5, 2006 regarding the Department’s proposed rule on trainees and interns, we support the Department’s efforts to retool the J-1 exchange visitor category in order to ensure that J participants are vetted properly and are entering the U.S. for the purposes envisioned in the Fulbright-Hays Act.

The Department’s interim final rule on trainees and interns sponsored by private sector programs represents a significant improvement over the current regulatory governance of these vital person-to-person exchanges. We are particularly appreciative that the Department has taken a thorough look at the proposed rule and the comments received on that proposal, including comments by AILA in June 2006, and incorporated many of those suggestions into this interim final rule.

Nevertheless, we believe there is some important fine tuning still required. We hope you will make revisions in the areas as discussed below.

### **Requests for Further Revision to Regulatory Language**

#### **§62.22(f)(3) Omission of Telephone Interviews**

We appreciate that the Department has eliminated the requirement that sponsors conduct in-person interviews with potential trainees or interns in the home country. Section 62.22(f)(3) now provides sponsors and third parties the options of performing these screenings either by videoconference or by web camera, in lieu of the personal interview.

However, while an improvement over the previously-proposed rule, this provision will still effectively exclude large numbers of applicants who would otherwise be eligible because they reside in countries where such electronic equipment is not commonly available. Many of our members report that their company clients who have their own designated J-1 training program or use one of the umbrella training sponsors commonly sponsor as J-1 trainees young professionals residing in remote areas. These individuals often lack easy access to foreign partner organizations or to either videoconferencing or webcam technology. Such equipment is usually located only in major cities and often only in the capital city of a country.

Allowing telephone interviews would vastly expand the accessibility of the J-1 program. Nothing in the supplementary information or analysis of comments suggests that telephonic interviews were considered or articulates a reason why telephonic interviews by the program sponsor or its agent would not be sufficient. Ironically, preclusion of the telephonic option will serve to eliminate applicants from many of the regions -- primarily the developing world -- who stand to benefit the most from the trainee and intern program.

Please amend the rule to specify that a phone interview can be utilized to satisfy the requirements of §62.22(f)(3).

#### **Problems with the DS-7002 Form**

We are aware of a number of stakeholders who submitted substantive comments to the proposed rule in June 2006 regarding the DS-7002 form. However, the form accompanying the interim final rule is identical to the previous incarnation. In addition, we note that neither the supplementary information nor the analysis of comments sections of Public Notice 5824 contain any mention of comments by these groups or others.

In short, it concerns us greatly that, apparently, the Department did not consider the

comments of stakeholders submitted over one year ago. This violates §553 (c) of the Administrative Procedure Act which requires consideration of all relevant material presented. It also serves as a disincentive for stakeholders and the public to submit comments on proposed rules in the future. We strongly urge the Department to review and consider comments which were submitted in a timely manner, provide an analysis of them, make any revisions to the DS-7002 form that it feels are warranted, and re-submit it for public comment.

We would also be remiss not to express our concern with the general lack of availability of the (un-revised) DS-7002 form. The 2006 proposed rule instructed interested parties to contact the Department for a copy of the form. The publication of this interim final rule contains no such notification. In fact, a person wishing to see the form as currently proposed must know to go to the SEVIS website and, then, click down four additional times to get to the actual form. This inaccessibility constitutes a significant barrier to the general public's ability to review and comment. AILA submits that the fact that the DS-7002 remains unchanged despite a plethora of comments is as significant as if proposed revisions had been made. The form should be much more accessible.

We also want to take this opportunity to weigh in on an issue regarding the form. The Department is attempting to regulate by form rather than through notice and comment rule-making. The supervisor's attestation on page one of the proposed DS-7002 mandates certain elements which must be considered in evaluating a given program. The language requires the supervisor to consider "the number of hours performed, the type of training, and the quality of the performance," in addition to other factors at the supervisor's discretion.

Though AILA renders no judgment at this time on these evaluative elements, we point out that the regulations, rather than attestations on a required form, are the proper method to enumerate these. However, the proposed section on evaluations, §62.22(1), is silent as to any specific elements which must be part of an evaluation. It only mandates that sponsors "develop procedures for evaluating all trainees and interns." We also note a contradiction between form and regulation. The former places responsibility for evaluations on the supervisor, and the latter on the sponsor.

#### §62.2 Field of training for interns

We commend the Department for clarifying that the intern category is for individuals who either have finished a degree within twelve months of the start date or are currently working toward a degree. We also appreciate that interns will now be permitted to complete entry-level, "first job," temporary employment in the United States. This will allow cultural exchange and exposure to American business practices.

However, the proposed text on interns is too restrictive in that it mandates that an intern may only participate in the new sub-category of J-1 intern when the intern is pursuing a Training/Internship Placement Plan in his/her academic field of study. Since the intern applicants have studied outside the U.S., the Department should look to how college programs are structured abroad and how they differ from the U.S. model.

Such a review would dictate the elimination of language restricting internships to a student's "specific academic field." It's not uncommon, for example, for history majors educated abroad to seek internships in law or public policy, or for psychology majors to be sought by the sales and marketing industries. AILA urges the Department to remove this restriction on internships.

#### §62.2 Trainee Eligibility

The Department initially proposed that trainees have at least three years of occupational experience. AILA proposed a period of two years. The interim final rule increased the requirement to five years (or possession of a post-secondary degree plus one year of occupational employment experience).

AILA believes the Department has moved in the wrong direction. While we understand the Department's interest in ensuring that participating J-1 trainees have sufficient ties to their careers abroad, AILA continues to maintain that requiring even three years of occupational experience will preclude many otherwise deserving applicants. Many people are unable to take a year or more out of their careers as they get older, due to increasing professional and family responsibilities. In addition, such a lengthy employment requirement will serve to blur the lines between the J-1 visa and the H visas. The Department's Analysis of Comments section acknowledges that the comments it received unanimously opposed the three year experience requirement for trainees. But in describing the changes reflected in the interim final rule, the only explanation provided is that the Department has "redefined the experience requirements."

While we are grateful that the Department proposes also to accept possession of a post-secondary degree plus one year of experience, the five years' length is problematic for the reasons expressed above. Thus, AILA continues to recommend that the Department revise this provision to require two years of foreign employment experience in the occupation as the alternative to the foreign degree with one year of foreign experience.

U.S. Department of State

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**Conclusion**

We thank the Department of State for the opportunity to be heard on these important issues and again reiterate our support for the Department's efforts to increase training program integrity. We hope that important revisions to the proposed rule can be made, in accordance with our above comments.

Sincerely,

**AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
DEPARTMENT OF STATE LIAISON COMMITTEE**