

# FACT SHEET

04/08/02

## **INS Proposes Significant Changes to Rules Governing Visitors and Students**

Millions of visitors are admitted to the United States each year under business visitor (B-1) and tourist (B-2) visas. To gain greater control over their presence, the Immigration and Naturalization Service (INS) is proposing several changes to the rules governing visitor admissions.

### **Prohibition On Attending School Prior to Approval**

A new rule, which will be published separately as an interim rule, takes effect immediately upon publication, but will still allow for public comment. The rule prohibits non-immigrant visitors admitted under B-1 or B-2 visas from pursuing a course of study at a school in the United States prior to receiving INS approval of their request to change non-immigrant status to that of an F (academic) or M (vocational) student. To facilitate this process, INS has set a target processing time of 30 days for all requests to change or extend non-immigrant status, with all four Service Centers achieving that target within the next 60 days.

### **Minimum Admission Period Eliminated**

The proposed rule will eliminate the current minimum six months admission period for B-2 visitors for pleasure, replacing it with *"a period of time that is fair and reasonable for the completion of the purpose of the visit."* When B visa holders apply for entry to the United States, they will be required to explain to an INS Immigration Inspector the nature and purpose of their visit so the Inspector can determine the appropriate length of stay. While INS Inspectors will make every effort to determine a fair and reasonable time period, the burden of proof rests with the alien. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30-day period of admission.

### **Changes to Standards for Extension of Stay**

The proposed rule will limit the conditions under which a B visitor can obtain an extension of stay, and will reduce the maximum extension period that can be granted. Persons in B status will be eligible to extend their stay in cases that have resulted from *"unexpected or compelling humanitarian reasons,"* such as medical treatment or a delay in the conclusion of a business matter. The request using Form I-539 (Application to Extend/Change Nonimmigrant Status) must be properly filed on a timely basis and be non-frivolous, and the alien must prove there are adequate financial resources to continue to stay in the United States and that he or she is maintaining a residency abroad. The rule also reduces the maximum extension that can be granted from one year to six months.

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As nearly all visitors with legitimate business or tourism interests are able to complete their stay within a reasonable admission period, these changes should not adversely affect them. INS does recognize that some visitors, such as certain retirees who own vacation homes in the United States, may wish to remain for longer than six months. The proposed rules will allow extensions of stay in such cases. The proposed changes to admission and extension of stay are part of a strategy to improve national security and reduce the probability that an alien will establish permanent ties in the United States, and thus remain in the country illegally.

### **New Requirements for Change of Status**

Individuals planning to attend school in the United States are expected to obtain the proper student visa prior to their admission to the United States. However, INS does recognize that some intending students will want to visit the United States first for bona fide visitor purposes, such as touring campuses or interviewing for admission. The proposed rule will establish new requirements for B non-immigrant visitor visa holders who wish to become students. Persons admitted under B non-immigrant visitor status will still be able to change their status to that of a student, but only if they stated their intent to study in the United States when they initially applied for admission and presented any I-20 forms they may have been issued. Inspectors will be required to note "Prospective Student" on the alien's I-94 form (Arrival/Departure Record). This rule will impact only those students admitted in B status after the rule's effective date.

Existing rules allowing the commencement of studies before a change of status is approved will continue to apply to those already in the United States in B non-immigrant visitor status, since they may have already started a course of study in reliance upon existing rules.

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### **Mandatory Surrender Proposed for Persons With Final Removal Orders**

The Immigration and Naturalization Service (INS) is proposing a rule that will require aliens who are subject to final orders of removal to surrender himself or herself within 30 days to INS once those orders become final. Anyone who fails to surrender as required will be denied discretionary relief from removal—including asylum, adjustment to permanent resident status, change of status, waivers of inadmissibility for immigrants, cancellation of removal, voluntary removal, registration of LPR status—at any time while he or she remains in the United States, and for a period of ten years after the alien's departure from the United States. This rule also establishes procedures for surrender to INS.

In the past, 89 percent of non-detained individuals with final orders of removal failed to surrender for deportation when ordered to do so. Under this rule, persons not detained at the time an order of removal becomes final will have a legal obligation to surrender to INS within 30 days of the issuance of an administratively final order of removal.

The proposed rule will be published in the Federal Register for public comment. This rule is substantially the same as a proposed rule published by former Attorney General Janet Reno on September 4, 1998. However, that rule only would have applied to individuals facing removal orders in the future, after publication of the final rule. It consequently would have exempted hundreds of thousands of individuals currently in removal proceedings, even though there would be many opportunities to provide the necessary notice to the alien. The new proposed rule includes aliens already in proceedings because they will receive legally adequate notice.

To deter individuals from absconding after they receive a final order of removal, this rule proposes that INS will be able to waive the denial of discretionary relief if an individual establishes that the failure to surrender was due to exceptional circumstances and that he or she appeared as soon as possible thereafter once circumstances allowed.

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