



# Visa Pages:

## U.S. TEMPORARY FOREIGN WORKER VISAS

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### F-1 VISA

Updated April 2014

The F-1 nonimmigrant visa allows foreign individuals to study in the United States; work is allowed on-campus part-time, and off-campus in only certain situations requiring government approval.

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## I. F-1 VISA

The F-1 nonimmigrant visa is for foreign students to study “at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States.”<sup>1</sup> The U.S. Department of Homeland Security (DHS) and the U.S. Department of State oversee the F-1 visa program. Schools apply for designation to be able to enroll foreign students, and once they enroll, schools are responsible for updating all pertinent information in the Student and Exchange Visitor Information System (SEVIS), a data base administered by DHS’s Immigration and Customs Enforcement which tracks foreign students.<sup>2</sup> The DHS’s Customs and Border Patrol oversees every admission to the U.S. at the border and other ports of entry.

Indeed, the F-1 visa has come to be widely recognized as another temporary work program for jobs ranging from low-wage retail clerks to skilled information technology positions. F-1 students are allowed to work off-campus when they show economic hardship or through practical training programs. Some students in science, technology, engineering and mathematics fields may stay and work in the United States for more than two years after graduation. Students working post-graduation do so only with authorization from DHS’s U.S. Citizenship and Immigration Services. The U.S. Department of Labor does not regulate the program at all despite its impact on U.S. labor markets. DHS spends considerable resources tracking foreign students, and their enforcement efforts center on finding and removing foreign students who violate the terms of their visa. There is a gap, however, in achieving justice for the students who fall victim to predatory schools that recruit them, charge exorbitant fees, and upon enrollment, immediately farm them out in low-wage jobs that double as curricular training programs. When the U.S. government discovers these visa mill schemes, the schools and officials are punished, and the students simply deported.

While DHS and the U.S. Department of State publish the number of F-1 students, neither agency regularly releases information about F-1 students who work. A non-governmental organization, the Institute of International Education, annually estimates the number of participants in post-graduation work programs based on an extensive surveys, and that number alone has tripled in the span of a decade, from 22,745 participants in 2002 to 85,157 in 2012. By 2014, this number had increased to 105,997.<sup>3</sup>

### A. DURATION

The F-1 visa is valid for the duration of the academic program, as long as the student is in school full time or is doing authorized practical training following graduation.<sup>4</sup> A student may be admitted for a period up to 30 days before the program start date.<sup>5</sup> An F-1 student is “considered to be maintaining status if he or she is making normal progress toward completing a course of study.”<sup>6</sup>

### B. NO ANNUAL CAP

There is no limit to the number of F visas that may be issued annually.

### C. F-2 VISA FOR DEPENDENTS

An F-1 student's spouse and minor children are eligible to apply for F-2 visas.<sup>7</sup> The duration of an F-2 visa is the same as the principal F-1 student's.<sup>8</sup> Unlike with spouses of J-1 and L-1 visas, F-2 spouses are not eligible to work in the United States.<sup>9</sup> F-2 spouses may not "engage in full time study" but minor children may attend elementary or secondary school.<sup>10</sup> An F-2 spouse who wants to study full time must apply for and obtain a change of nonimmigrant classification to student status (F-1, J-1, or M-1).<sup>11</sup> F-2 spouses and children who study without permission are in violation of their immigration status.<sup>12</sup>

## II. F-1 STUDENTS – ELIGIBILITY AND APPLICATION PROCESS

The U.S. Department of Homeland Security (DHS) and the U.S. State Department are in charge of administering the F-1 student visa program. Within DHS, the Immigration and Customs Enforcement's [Student Exchange Visitor Program](#) (SEVP) is the primary agency that manages both the schools and the students. Foreign individuals who want to study in the United States must apply to and be accepted at a school that is authorized by the SEVP to enroll international students. After the student receives an official statement of eligibility from the school, he or she will need to pay an online fee and then apply for the visa abroad. During the visa application process, the student will have to show that they have paid all necessary immigration fees, have sufficient funds to pay for their tuition and living expenses, and intend to return home after their studies are complete. Obtaining the visa does not guarantee admission to the United States. DHS's U.S. Customs and Border Patrol makes that decision on an individualized basis when the F-1 visa holder presents for admission at the U.S. border or port of entry.

Several employment options are available for F-1 students. Work always requires approval from the school and off-campus work requires approval from DHS' U.S. Citizenship and Immigration Services. Throughout the student's stay in the U.S., the school is responsible for updating SEVIS with the student's address changes, academic progress and employment status. Students who graduate may apply for a visa extension to complete the next degree level.

### A. DESIGNATED SCHOOL ORGANIZATION

Schools in the United States must seek [official designation](#) to enroll F-1 students.<sup>13</sup> DHS has established a number of different criteria for approval, the most basic of which is the requirement that "it is a bona fide school." DHS conducts site visits to ensure that schools are legitimate.<sup>14</sup> As of July 2013, DHS has authorized 9,522 schools to sponsor F-1 students.<sup>15</sup> Most of these colleges and universities go to great lengths to ensure compliance with the F-1 program, educating students with copious amounts of regulatory data and providing a steady stream of F-1 student updates to DHS' SEVIS database.

#### 1. ONLINE COURSEWORK ALLOWED

F-1 program regulations suggest that the ability to engage in on-line learning is very limited because an F-1 student's "physical attendance" for coursework is expected.<sup>16</sup> Notwithstanding this requirement, DHS has clarified:

There is no limit to the number of online classes that can be counted toward a full course of study if the school can confirm the physical presence and participation of students. SEVP encourages schools to make maximum use of monitored online training as feasible.<sup>17</sup>

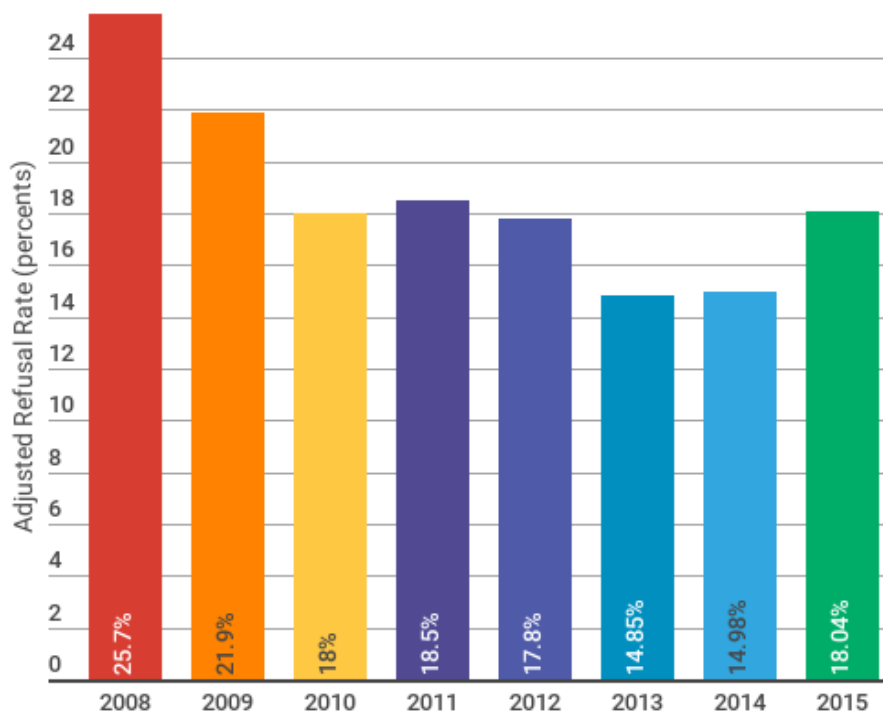
### DIGGING DEEPER: SEVIS DATABASE

The Student and Exchange Visitor Information System (SEVIS) is the computer database designed to track information about students, including F-1 students.<sup>18</sup> Within the U.S. Department of Homeland Security (DHS), the Immigration and Customs Enforcement's [Student Exchange Visitor Program](#) oversees the system, which was created in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act. Through SEVIS, DHS collects information from designated school organizations relating to F-1 students while they are present in the U.S. SEVIS is a web-based tracking and monitoring system that enables schools to electronically submit this information throughout the student's stay. Schools must report all status events including each student's entry/exit from the U.S., any changes of address, program extensions, employment notifications, or other changes.<sup>19</sup> A student must inform their school of any legal changes to his or her name or of any change of address within 10 days of the change.<sup>20</sup> Information from SEVIS about the number of students and where they study is [published quarterly](#). Historical information is found in the agency's [Freedom of Information Act](#) library under the heading Student and Exchange Visitor Program.

## B. STEPS FOR STUDENTS

Foreign individuals must apply to and be accepted for enrollment at a school that has been approved to enroll international students. Through SEVIS, school administrators generate Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students, certifying an applicant's eligibility for student or exchange visitor status. The school sends the Form I-20 to the student. With that form, the student applies for the visa at the U.S. consulate or embassy abroad.<sup>21</sup> In addition to this form, students need to have proof that the student has paid the SEVIS fee, statements showing sufficient funds to pay tuition, room and board, preparation for the course of study, and proof of the applicant's present intent to leave the U.S. at the conclusion of their studies. A student also must be proficient in English or be enrolled in classes leading to English proficiency.<sup>22</sup> If an applicant fails to meet the criteria, the visa will be denied.<sup>23</sup> There is a higher refusal rate than with other nonimmigrant visas that authorize work. Since 2008, the State Department's adjusted refusal rate for F-1 visas has met or neared 20%.<sup>24</sup> Even so, the majority of F-1 visa applications are granted.

### F-1 Visas Approved by State Department with Refusal Rate



U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2010, available at [http://www.travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html).

U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2013; 2014; 2015 <https://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html>

Adjusted Visa Refusal Rate = (Refusal - Overcome) / ((Refusal-Overcome) + Issuances). See U.S. Department of State, Guidelines of the Visa Waiver Program, available at <http://www.travel.state.gov/pdf/refusalratelanguage.pdf> (June 2013).

#### 1. MAINTAINING THE FORM I-20

An F-1 student is expected to maintain possession of the initial Form I-20 bearing the admission number, and any subsequent copies that the school issues when changes are made or employment is authorized.<sup>25</sup> Replacement copies are equally valid, however.

## F-1 Students at Work: Requirements at a Glance

Agency	Data collected	Number	Date Range	Notes
U.S. Department of Labor	Nothing	-	-	-
U.S. State Department	Number of F-1 visas actually issued to foreign students at U.S. Consulates abroad	447,410 F-1 visas granted[1]	FY 2011	<ul style="list-style-type: none"> <li>This number does not count Canadian F-1 students because they are not required to apply for F-1 visas through the State Department; but they do get I-94s and are counted in the admissions number below.</li> <li>This number represents visas issued; receiving a visa does not guarantee admission to the U.S.</li> <li>Statistics on individuals who are turned away at the border are not disaggregated by visa classification.</li> </ul>
U.S. Department of Homeland Security – U.S. Citizenship and Immigration Services	Nothing	-	-	USCIS receives the I-765 requests for employment authorization that are required for F-1 students to work in OPT programs.
U.S. Department of Homeland Security – U.S. Customs and Border Patrol	Number of F-1 admissions and readmissions at the border with a I-94 entry document	1,702,730 admissions counted for individuals with F-1 visas[2]	FY 2011	Individuals may be counted more than once in the admissions numbers because many students depart and re-enter the U.S. in the same year. First-time and repeat entries are not distinguished. All admissions are counted regardless if the F-1 student was admitted on a new I-94 or a valid I-94 that was previously used.
U.S. Department of Homeland Security – U.S. Immigration and Customs Enforcement	Number of individuals in active F-1 status as reported on SEVIS	820,423 active F-1 and M-1 students[3]	Jan – March 2011	<ul style="list-style-type: none"> <li>This number includes both F-1 academic students and M-1 vocational students. The SEVIS quarterly reports group these numbers together.</li> <li>SEVIS data is updated continually; ICE pulls the numbers once per quarter.</li> </ul>

SOURCES: [1] U.S. State Department, FY 1997-2012 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (May 2013). Because the U.S. Department of Homeland Security has not yet published its admissions data for FY 2012, this chart is using data from FY 2011 to aid in comparing the data. [2] Randall Monger, U.S. Department of Homeland Security, Office of Immigration Statistics, Nonimmigrant Admissions to the United States: 2011 (July 2012), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ni\\_fr\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2011.pdf) (last visited May 2013). [3] U.S. Department of Homeland Security, ICE, Student & Exchange Visitor Program, SEVIS by the Numbers General Summary Quarterly Review, quarter ending March 31, 2011, available at <http://www.ice.gov/doclib/foia/sevis/sevis-by-the-numbers-quarterly-mar2011.pdf> (last visited June 2013).



## 2. PAYING THE SEVIS FEE

F-1 students are required to pay a \$200 Student and Exchange Visitor Information System (SEVIS) fee to DHS.<sup>26</sup> Students use Form I-901, Fee Remittance for Certain Nonimmigrants, to [pay the SEVIS fee](#).<sup>27</sup> At the visa interview, Consular officers verify SEVIS fee payment through the system. It is generally a one-time fee as long as the nonimmigrant maintains F-1 status.<sup>28</sup> A new fee is not required if the student transfers to a different school, extends his or her stay or leaves the U.S. temporarily and reenters.

## 3. ADMISSION TO THE UNITED STATES

A visa does not guarantee admission to the United States. The U.S. Department of Homeland Security's Customs and Border Protection will either permit or deny entry after [their own inspection](#) and will determine the permitted time allowed in the U.S., which may be less time than what is listed on the visa itself.<sup>29</sup>

### III. F-1 STUDENTS – EMPLOYMENT OPTIONS

Once the F-1 student is admitted to the U.S., there are several options for working. Upon arrival, all foreign students may work on-campus at the school they are attending for up to 20 hours per week, without limitation. Off-campus work up to 20 hours a week is only allowed after students complete one year of school in the U.S., and as long as the job is related to their field of study. All work requires school approval. There are two types of permitted off-campus work while the F-1 student is in school: curricular practical training (CPT) and optional practical training (OPT). CPT is in conjunction with coursework and does not need approval from the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). OPT is separate from course work and does require USCIS approval. After the F-1 student graduates, OPT is the only way to work lawfully in the U.S. After graduation, full-time OPT work is allowed for up to 12 months. If the job is in a STEM field, USCIS may approve an additional 17 months for OPT work, making the total work time 29 months.

#### A. ON-CAMPUS EMPLOYMENT

Students are allowed to [work on-campus](#) if it is “educationally affiliated” with the school or “directly provide services for students.”<sup>30</sup> Students may only work up to 20 hours per week when school is in session, and full-time during breaks and vacation.<sup>31</sup> Students must [obtain permission](#) from their school and apply for and receive a social security number before starting work.

##### 1. NO REAL LIMIT ON JOB TYPE

Regulations provide that the on-campus job must be an “integral” part of the student’s educational program.<sup>32</sup> However, DHS apparently does not consider the former criteria to be a prerequisite since it is not even mentioned in DHS’ own training program for schools that describes the characteristics of on-campus employment.<sup>33</sup>

##### 2. PROHIBITION ON U.S. WORKER DISPLACEMENT AT ON-CAMPUS JOBS

F-1 regulations state that on-campus jobs offered to foreign students may not displace a U.S. resident.<sup>34</sup> However, there are no other rules elaborating how – or even whether - to determine whether foreign student workers will in fact replace U.S. workers. Moreover, there is no required job posting, no U.S. worker recruitment, no labor market test and no role for the U.S. Department of Labor. DHS does not appear to have published guidance about this regulation.<sup>35</sup>

#### B. OFF-CAMPUS EMPLOYMENT

##### 1. SEVERE ECONOMIC HARDSHIP

F-1 students may be allowed to [work off-campus](#) in cases of economic necessity if on-campus work is not available or insufficient. An eligible F-1 student may request that his or her school [recommend off-campus employment](#) authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student’s control.<sup>36</sup> For example, “the loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial

condition of the student's source of support, medical bills, or other substantial and unexpected expenses” are all mentioned in the regulations defining hardship.<sup>37</sup> Working off-campus requires both school and DHS approval.<sup>38</sup>

## F-1 Off-Campus Employment Due to Severe Economic Hardship

School may recommend the student for work off-campus for one-year intervals by certifying that:	
✓	Student has been in F-1 status for one full academic year
✓	Student is in good standing and carrying a full course load
✓	Acceptance of employment will not interfere with the student's full course load
✓	Off-campus employment is necessary to avoid severe economic hardship
✓	Hardship due to unforeseen circumstances beyond the student's control
✓	On-campus employment is either unavailable or insufficient to meet the student's needs

### SOURCE 8 CFR 214.2(f)(9)(ii)(D)

#### A) EMPLOYMENT AUTHORIZATION APPLICATION TO USCIS

The student submits the following to USCIS: the economic hardship application for employment authorization on [Form I-765](#), the [required fee](#), along with the Form I-20 showing the school's recommendation for off-campus employment and any supporting materials.<sup>39</sup> If the application is denied, USCIS must give the reasons for the denial but there is no right to an appeal. If employment is authorized, an Employment Authorization Document (EAD) will be issued.<sup>40</sup>

#### B) EMPLOYMENT AUTHORIZATION DOCUMENT DURATION AND JOB PORTABILITY

The employment authorization document (EAD) to work off-campus may be granted in one-year intervals up to the expected date of completion of the student's current course of study.<sup>41</sup> An off-campus EAD may be renewed if the student is maintaining status and good academic standing.<sup>42</sup> A student may work for any employer with the EAD. In other words, unlike temporary nonimmigrant work visas such as the H, J and L subcategories, the EAD is not tied to a particular employer. An F-1 student may not continue to work off campus after graduation even if the EAD has not yet expired.

#### C) WORK HOURS

F-1 students who work off-campus with a valid EAD for economic necessity are only [allowed to work](#) up to 20 hours per week while school is in session.<sup>43</sup> Students may work full time during school breaks.<sup>44</sup>

### DIGGING DEEPER: EMERGENT CIRCUMSTANCES

When a world event impacts a particular nationality of nonimmigrants in the U.S. the Secretary of Homeland Security may publish notice and special student relief.<sup>45</sup> Relief may include the ability of certain F-1 students to work off-campus.<sup>46</sup> In some circumstances, students with emergent circumstances are allowed to reduce their full course of study.<sup>47</sup> Students in these situations will be considered to be in status during the authorized employment provided that the student is registered for at least 6 credits per term if the student is at the undergraduate level or at least 3 credits per graduate term, and is continuing to make progress toward completing the course of study.<sup>48</sup>

## 2. CURRICULAR PRACTICAL TRAINING

Curricular Practical Training (CPT) is available after the F-1 student completes one year of academic study.<sup>49</sup> CPT must be “an integral part of an established curriculum” and be related to the student’s field.<sup>50</sup> CPT programs can include work/study, internships, cooperative education, “or any other type of required internship or practicum, which is offered by sponsoring employers through cooperative agreements with the school.”<sup>51</sup> There is “no restriction on the number of hours a student can work per week while in CPT.”<sup>52</sup> Students who engage in one year or more of CPT are generally not eligible for OPT.<sup>53</sup> There is an exception to the one academic year prerequisite for students enrolled in a graduate program that requires immediate training.<sup>54</sup>

### DIGGING DEEPER: MANDATED TRAINING IN GRADUATE PROGRAMS

Students may start work in a CPT program immediately following enrollment in a graduate program such as social work, counseling and nursing, when training is mandatory or necessary to obtain the degree.<sup>55</sup> Graduate F-1 students may work for up to twelve months, and still be allowed to enroll in subsequent employment. Mandatory CPT programs may not exceed the duration of the course of study.<sup>56</sup> If more than 12 months is spent in CPT, the student will not be eligible for subsequent employment.

#### A) NO SPECIFIC WAGE REQUIRED

There is no required wage for CPT work. DHS specifically states that “there is no restriction on compensation during CPT.”<sup>57</sup>

#### B) SCHOOL MUST APPROVE CPT WORK AND REPORT TO SEVIS

Prior to starting a CPT program, the student must request authorization from their school.<sup>58</sup> DHS delegates to the school the responsibility for determining what is appropriate training. If approved, the school will update the Form I-20 with the work endorsement. Permission from USCIS is not required but the school must update the SEVIS database about the details of the job. Some schools have adopted a broad definition of what constitutes “integral” training in order to sometimes unlawfully expand the scope of available work opportunities.<sup>59</sup>

## 3. OPTIONAL PRACTICAL TRAINING

Optional Practical Training (OPT) is for off-campus work directly related to the F-1 student’s area of study.<sup>60</sup> Students may work at OPT jobs only after receiving approval from USCIS.<sup>61</sup> OPT jobs are allowed both before and after the student graduates. To qualify for pre-completion OPT (while the student is still in school), the F-1 visa holder must first have completed a full academic year at the college level.<sup>62</sup> Pre-completion OPT is part-time while school is in session and is full-time during breaks.<sup>63</sup> Post-

completion OPT is available during the 14 month period after graduation.<sup>64</sup> However, a 17-month extension of OPT may be granted for graduates in science, technology, engineering and mathematics.<sup>65</sup>

#### A) SCHOOL AND USCIS MUST AUTHORIZE OPT EMPLOYMENT

Both the school and USCIS authorize OPT work. Students may apply for pre-completion OPT within 90 days of the end of the first academic year and for post-completion OPT within the window of 90 days before and 60 days after graduation.<sup>66</sup> The first step in the process is for F-1 students to request that the school recommend OPT. Upon approval, the school provides the student a signed Form I-20 indicating the OPT recommendation and enters that information on SEVIS.<sup>67</sup> Next, the student must apply for employment authorization from USCIS by filing [Form I-765](#), Application for Employment Authorization along with the [required fee and supporting documents](#).<sup>68</sup> Students must file their Form I-765 with USCIS within 30 days of the school's entering the OPT recommendation on SEVIS.<sup>69</sup> If USCIS approves, the F-1 student worker will receive an Employment Authorization Document (EAD).<sup>70</sup> A student may work for any employer with the EAD, as long as that employment fits within the OPT program guidelines. In other words, unlike temporary nonimmigrant work visas such as the H, J and L subcategories, the EAD is not tied to a particular employer. A student may not begin work until the approved start date shown on the EAD.<sup>71</sup> If USCIS denies the employment authorization application, the reasons for denial will be given, but there is no chance for appeal.<sup>72</sup>

#### B) STEM EXTENSIONS FOR POST-DEGREE OPT WORK

F-1 graduates in science, technology, engineering or mathematics (STEM) fields are [eligible for an extension](#) of up to 17 months to continue work in their OPT jobs.<sup>73</sup> USCIS has published a list of more than [300 possible degrees](#) approved for the STEM extension.<sup>74</sup> In other words, graduates with any of these STEM degrees may work with their F-1 visa for a total of 29 months in the U.S.<sup>75</sup> For the post-completion OPT extension, students with valid F-1 status must be enrolled in the initial twelve-month OPT program with a job in their degree field.<sup>76</sup> To obtain the extension, the student must submit another Form I-765, with another fee, to USCIS prior to the expiration date of the student's current EAD.<sup>77</sup>

##### 1) H-1B VISA VIA STEM OPT EXTENSION

The STEM OPT extensions started in 2008. The decision followed a 2004 DHS regulatory rule change to lower the cap on H-1B visas to 65,000 per year. DHS announced that the STEM OPT extension was designed to allow employers “two chances to recruit these highly desirable [foreign] graduates through the H-1B process, as the extension is long enough to allow for H-1B petitions to be filed in two successive fiscal years.”<sup>78</sup> Now, OPT is regarded as the conventional route for an F-1 student worker to convert to an H-1B worker.<sup>79</sup> However, in March 2014 the Washington Alliance of Technology Workers, a Washington-State based technology union, filed a federal lawsuit against the Department of Homeland Security challenging the 2008 interim rule. The lawsuit alleged that the 2008 OPT extensions hurt its union members by increasing competition and suggested the OPT rules function as a way around H-1B quotas. In August 2016,

a [federal judge ruled](#) that the DHS must pay the union more than \$42,000 (considerably less than the \$465,000 they sought).<sup>80</sup>

## 2) CAP-GAP EXTENSION FOR F-1 TO H-1B

Generally, F-1 visas are valid for the temporary period defined as the “time during which an F-1 student is pursuing a full course of study” at an approved school or is in a practical training program.<sup>81</sup> The duration of authorized OPT work depends on the F-1 graduate’s field of study, and may last up to 29 months. However, there is another 6 month extension for OPT workers whose employers file paperwork necessary to convert them to H-1B workers.<sup>82</sup> This extension is called the “cap-gap” because F-1 students may remain in OPT jobs while waiting for USDOL and USCIS to process their employer’s H-1B application without being forced to leave the United States.<sup>83</sup> F-1 students in OPT jobs who do not work for an employer willing to hire them as H-1B workers do not get extra time. When their OPT period expires they must leave the country within 60 days.

## C) JOB PORTABILITY

Students who work in OPT jobs may work for multiple employers, work for hire, be a self-employed business owner, or work through an agency or consulting firm.<sup>84</sup> Little information is published about to what extent F-1 graduates change employers during their OPT programs. However, if F-1 workers are depending on their current employer to sponsor them for H-1B status upon the expiration of the 29 month OPT period, they may lack the practical ability to change jobs.

### **DIGGING DEEPER: NO REGULAR WORK FOR BORDER COMMUTER STUDENTS**

Border commuter students are not authorized to accept any employment in connection with their F-1 student status, except for CPT or post-completion OPT.<sup>85</sup> F-1 border commuter students are citizens of Canada or Mexico who enroll part-time in school located within 75 miles of a U.S. border and maintain residence in their own country.<sup>86</sup>

## C. TAXES

Employers do not have to pay employment taxes on F-1 student workers’ wages – which can be up to 8% – because they are exempt from this requirement.<sup>87</sup> F-1 students who work will usually pay state and federal income taxes, depending on whether they are categorized for tax purposes as either non-resident aliens or resident aliens. A non-resident alien is only taxed on income earned in the U.S., while a resident alien pays tax on income earned both inside and outside the U.S. The Internal Revenue Service [publishes guidance](#) for foreign workers because federal tax rules are complicated and depend on each individual situation.

## D. NO F-1 STUDENT EMPLOYMENT DURING STRIKE OR LABOR DISPUTE

F-1 students may not work at any location where there is a strike or other labor dispute involving a work stoppage of workers. In these situations, “employment authorization, whether or not part of an academic program, is automatically suspended” when the U.S.

Department of Labor certifies that workers in the same “occupation as F-1 students are striking at the place of employment.” Employers are prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.



## IV. F-1 STUDENTS IN THE U.S. – DATA

Both the Department of State and the U.S. Department of Homeland Security maintain data about F-1 students. The number of new F-1 visas has risen over the last decade; in 2013, there were over 530,000 issued.<sup>88</sup> The amount of individuals in “active F-1 status” hovers around 800,000 at any given time. F-1 students come to the U.S. from all over the world, but over 73% come from Asian nations. China is the largest sending country for F-1 students, followed by India, South Korea, Saudi Arabia, and Japan.<sup>89</sup> Even though the U.S. government possesses detailed information on F-1 students, including their age, gender, country of origin, whether they are working, and where, complete data is not publicly available. The Institute of International Education maintains an extensive database on F-1 students, including information on their employment. That data shows that the number of F-1 students who work in optional practical training programs has increased by 261% over the past decade, from an estimated 29,340 in 2003/4 to an estimated 105,997 workers in 2013/14<sup>90</sup>

### A. NUMBER OF F-1 STUDENTS IN THE U.S.

F-1 Numbers at a Glance

Agency	Data collected	Number	Date Range	Notes
U.S. Department of Labor	Nothing	-	-	-
U.S. State Department	Number of F-1 visas actually issued to foreign students at U.S. Consulates abroad	534,320 F-1 visas granted[1]	FY 2013	<ul style="list-style-type: none"> <li>This number does not count Canadian F-1 students because they are not required to apply for F-1 visas through the State Department; but they do get I-94s and are counted in the admissions number below.</li> <li>This number represents visas issued; receiving a visa does not guarantee admission to the U.S. Statistics on individuals who are turned away at the border are not disaggregated by visa classification.</li> </ul>
U.S. Department of Homeland Security – U.S. Citizenship and Immigration Services	Nothing	-	-	USCIS receives the I-765 requests for employment authorization that are required for F-1 students to work in OPT programs.
U.S. Department of Homeland Security – U.S. Customs and Border Patrol	Number of F-1 admissions and readmissions at the border with a I-94 entry document	1,577,509 admissions counted for individuals with F-1 visas[2]	FY 2013	Individuals may be counted more than once in the admissions numbers because many students depart and re-enter the U.S. in the same year. First-time and repeat entries are not distinguished. All admissions are counted regardless if the F-1 student was admitted on a new I-94 or a valid I-94 that was previously used.
U.S. Department of Homeland Security – U.S. Immigration and Customs Enforcement	Number of individuals in active F-1 status as reported on SEVIS	1.13 million	Qtr Ending Feb 2015	<ul style="list-style-type: none"> <li>This number includes both F-1 academic students and M-1 vocational students. The SEVIS quarterly reports group these numbers together.</li> <li>SEVIS data is updated continually; ICE pulls the numbers once per quarter.</li> </ul>

SOURCES:[1] U.S. State Department, FY 1997-2013 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (May 2015).

[2] Katie Foreman and Randall Monger, U.S. Department of Homeland Security, Office of Immigration Statistics, Nonimmigrant Admissions to the United States: 2013, available at [https://www.dhs.gov/sites/default/files/publications/Nonimmigrant\\_Admissions\\_2013.pdf](https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Admissions_2013.pdf) (last visited February 2017).

[3] U.S. Department of Homeland Security, ICE, Student & Exchange Visitor Program, SEVIS by the Numbers General Summary Quarterly Review, quarter ending February 2015, available at <https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf> (last visited Feb 2017).



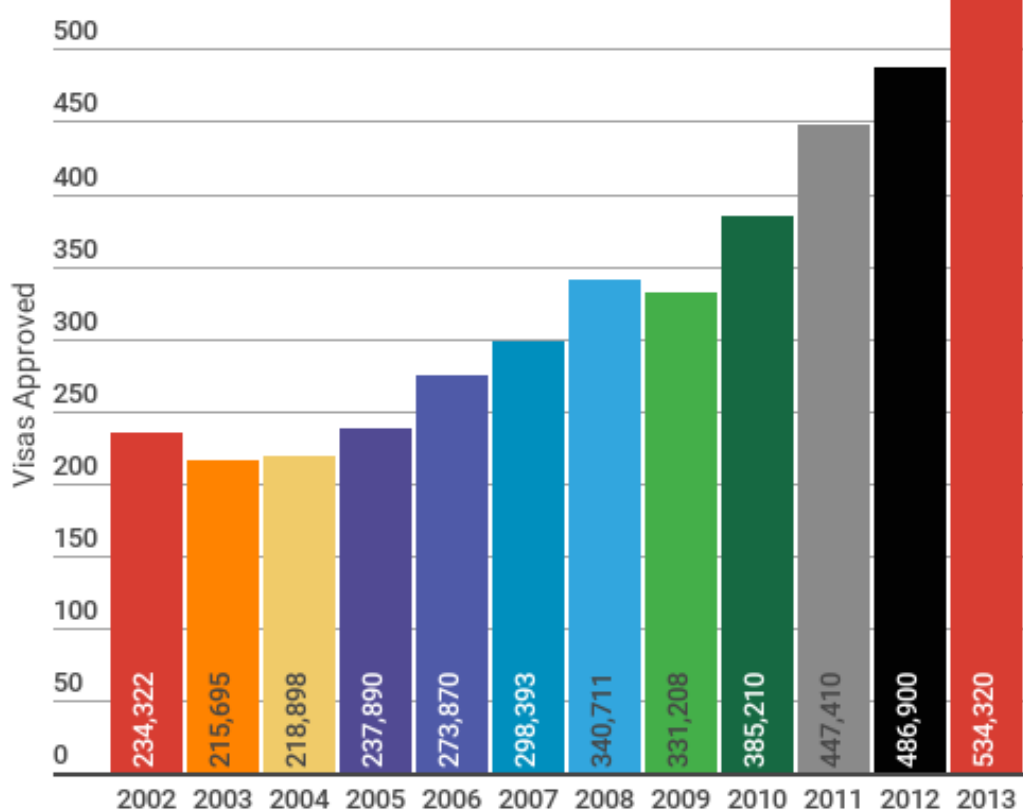
## 1. U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor (USDOL) does not have any role in the administration of the F-1 visa program. As such, USDOL neither collects nor maintains data regarding the number of F-1 students that are working in the U.S.

## 2. U.S. DEPARTMENT OF STATE

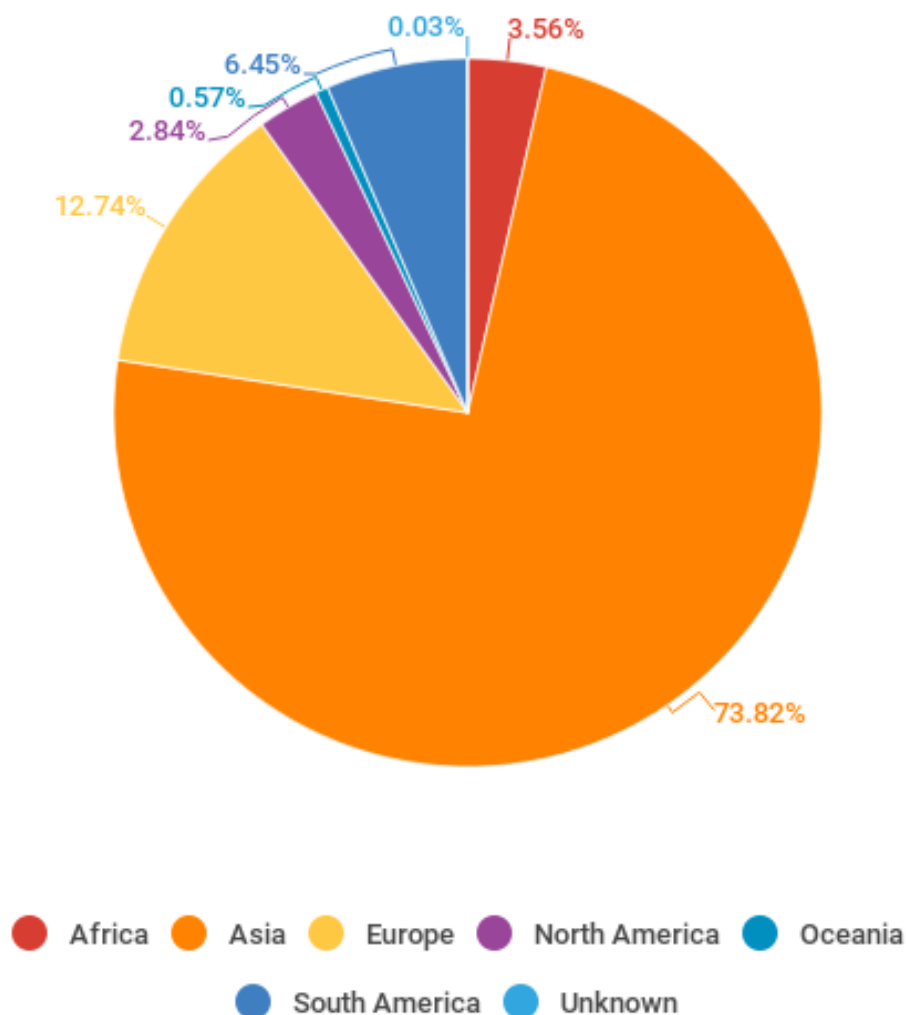
The Department of State publishes the number of F-1 visas that are issued annually. In 2013, 534,320 new F-1 visas were issued.<sup>91</sup>

F-1 Visas Approved by State Department



SOURCE: U.S. Department of State, FY 1997-2015 NIV Detail Table, available at [https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FYs97-15\\_NIVDetailTable.xls](https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FYs97-15_NIVDetailTable.xls) (January 2017).

### F-1 Sending Continents by Visas Issued - 2013



Source: U.S. Department of State, *FY 1997-2013 NIV Detail Table*, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html)

### 3. U.S. DEPARTMENT OF HOMELAND SECURITY

The Department of Homeland Security has two agencies involved in managing the F-1 program and thus, two sets of numbers. The U.S. Immigration and Customs Enforcement's (ICE) maintains the database tracking foreign students while they are in the United States. At the border or port of entry, the Customs and Border Patrol (CBP) interviews individuals who have received F-1 visas and decides whether to grant their admission.

#### A) U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

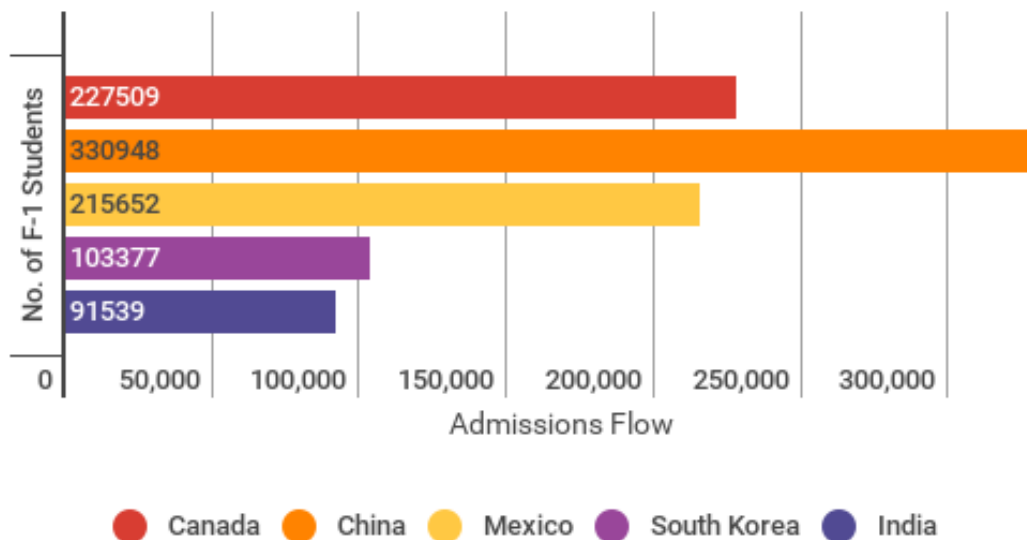
ICE publishes [SEVIS quarterly reports](#) showing the number of individuals in active F-1 status. During the quarter ending in February 2015 there were 1.13 million active F-1 and M-1 students in the United States.

#### B) U.S. CUSTOMS AND BORDER PATROL

Each time a nonimmigrant worker enters the United States, CBP counts the entry as an admission. The number of admissions of individuals with F-1 visas is published annually.<sup>92</sup> In 2013, there were 1,577,509 admission events for individuals with an F-1 visa.<sup>93</sup> Given the fact that there is no limitation on the times an F-1 worker may depart and re-enter the U.S., the admissions number is high relative to the number of visas issued. The way the data is collected does not distinguish between the first and return entries; all are counted as separate admissions.<sup>94</sup> Many F-1 students return to their home countries for school holidays or on vacation breaks during the year, which results in inflated numbers due to multiple crossings by one individual. Departures are not tracked.<sup>95</sup>

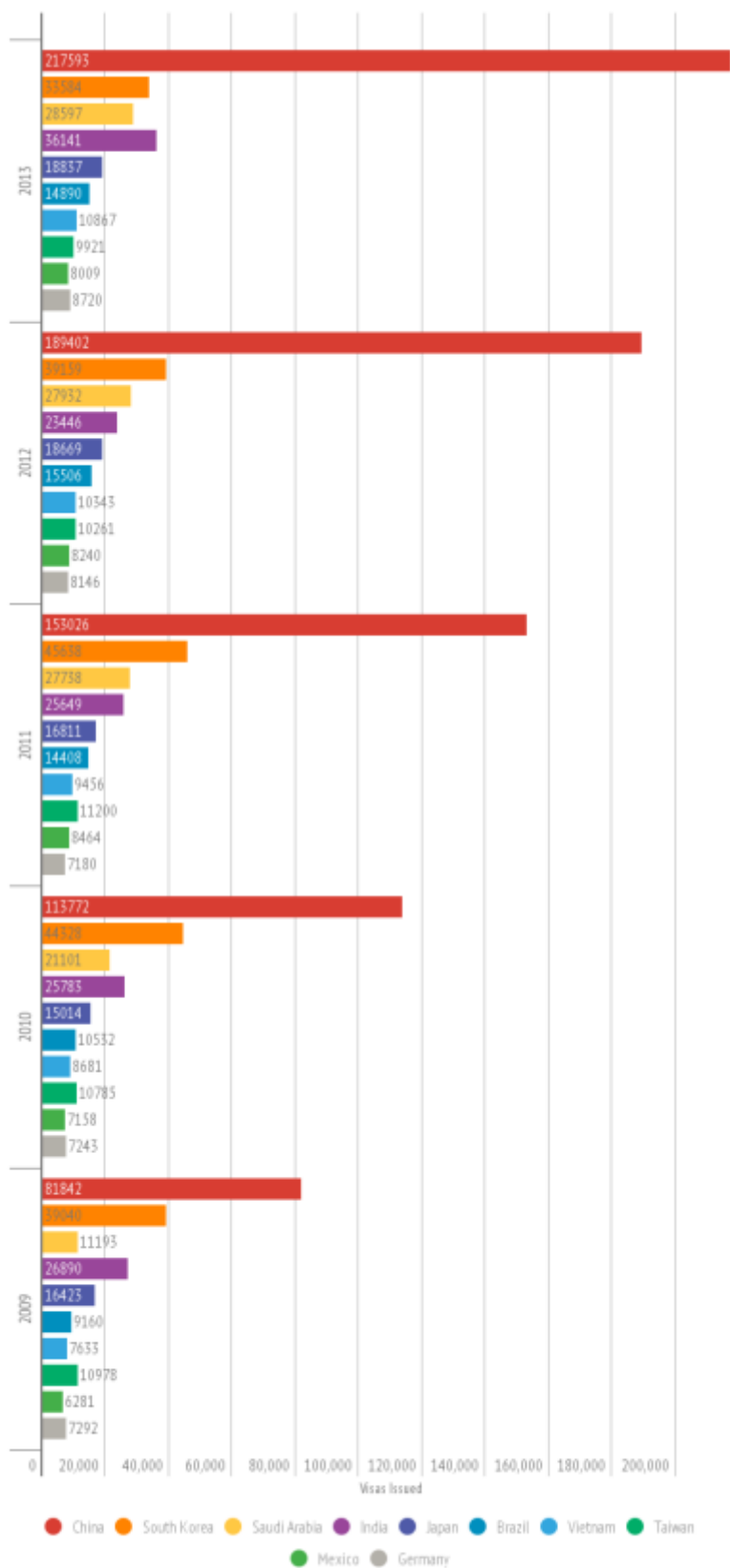
## B. F-1 STUDENT DEMOGRAPHICS

Top Five Sending Countries: F-1 Students Admissions Flow - 2013



**SOURCE:** U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (last visited May 2015).

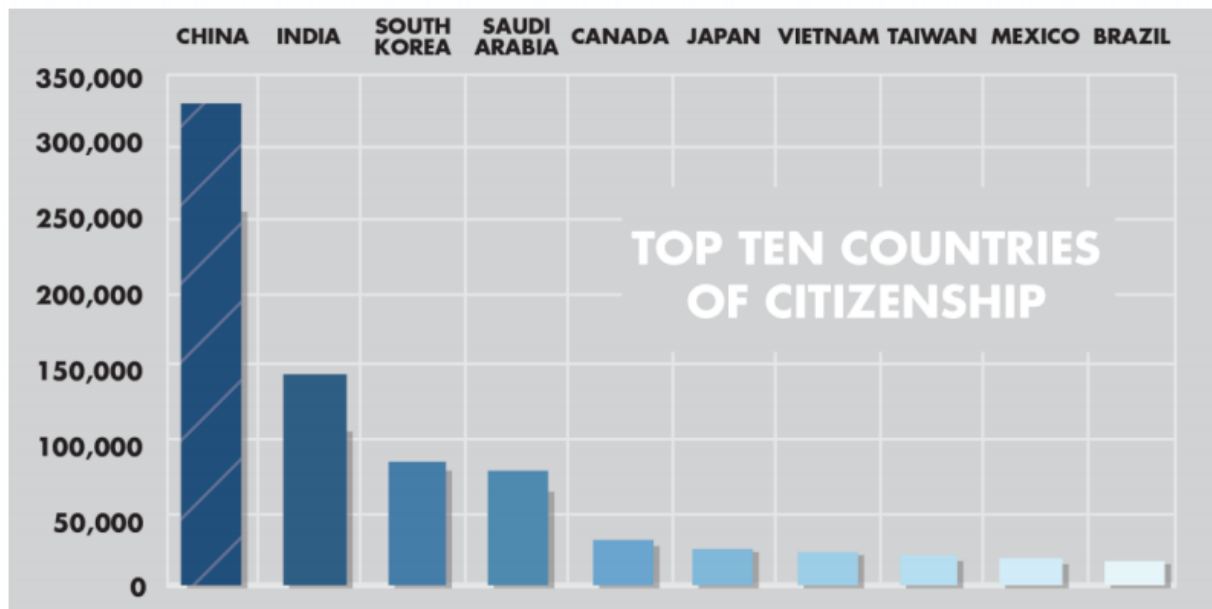
Top Ten Sending Countries: F-1 Visas Issued



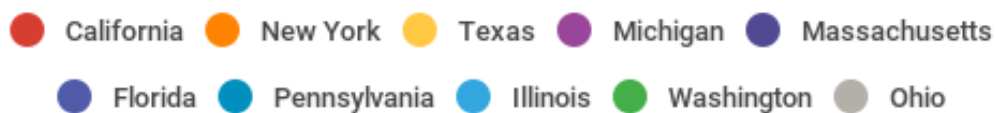
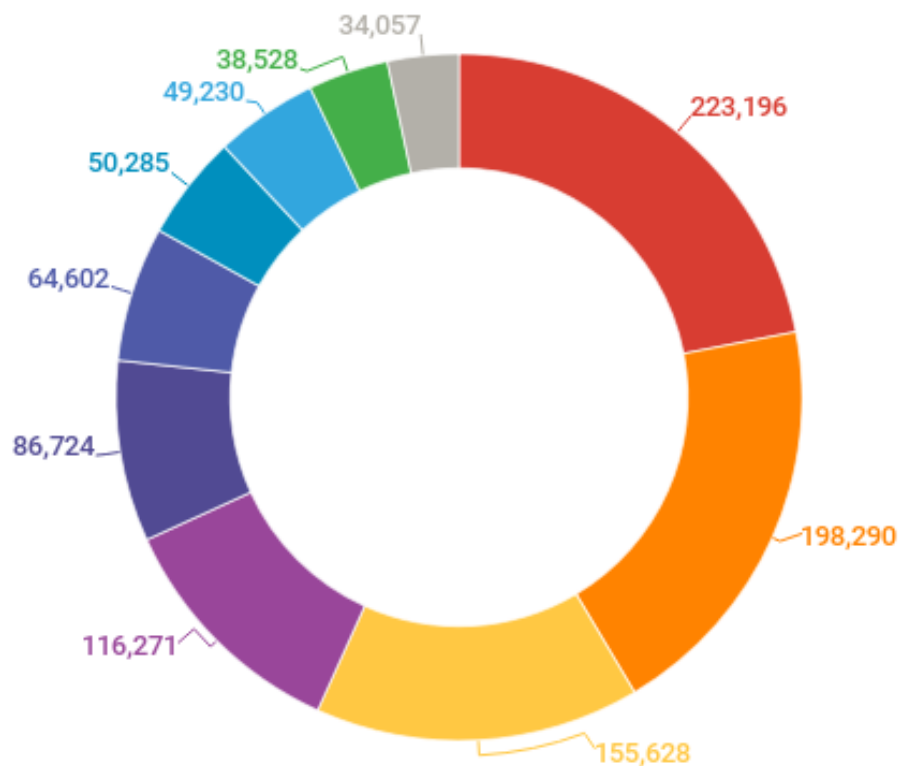
Source: U.S. Department of State, FY 1997-2015 NIV Detail Table, available at [https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTable/FY97-15\\_NIVDetailTable.xls](https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTable/FY97-15_NIVDetailTable.xls) (January 2017).

Quarterly SEVIS reports show the top countries of citizenship of active F-1 academic and M-1 vocational students. The F-1 and M-1 numbers are not disaggregated. Nonetheless, the inclusion of M-1 numbers does not change the overall make-up of the top sending countries for foreign students. As of February 2015, the four most recent calendar quarters show China, South Korea, India, Saudi Arabia and Canada as the most common nationalities for active students.<sup>96</sup>

## TOP 10 COUNTRIES OF CITIZENSHIP

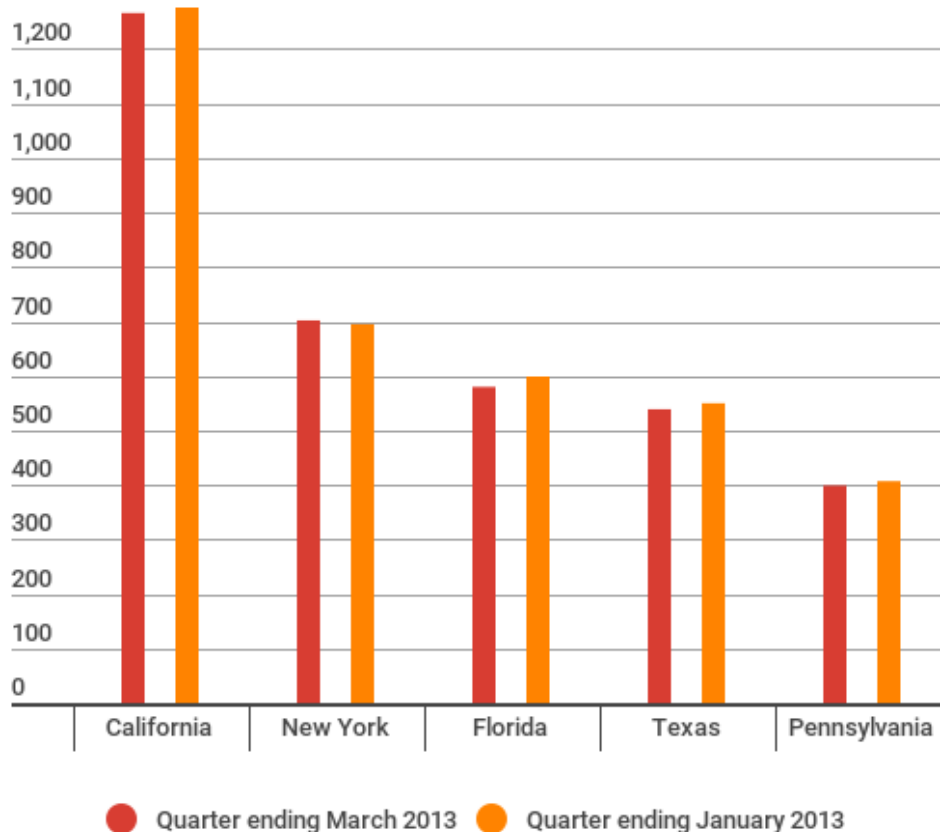


### F-1 Student Admissions by Top Ten States - 2013



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions (I-94 Only) by Class of Admission and State or Territory of Destination: Fiscal Year 2013, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents> (last visited May 2015).

Approved Schools for Foreign Students by Top Five States - 2013



### C. F-1 STUDENT EMPLOYMENT NUMBERS

Students with F-1 visas who work in the U.S. are certainly the most tracked and observed visa holders, but they are perhaps among the least studied nonimmigrant workers. SEVIS tracks “non-immigrants from the moment they are accepted at a U.S. institution, through the completion of their program” and provides real-time information to the U.S. government.<sup>97</sup> However, ICE only publishes the numbers of active foreign students, their fields of study and nationality. The quarterly SEVIS reports do not mention any F-1 student employment statistics or employment-related demographic information.

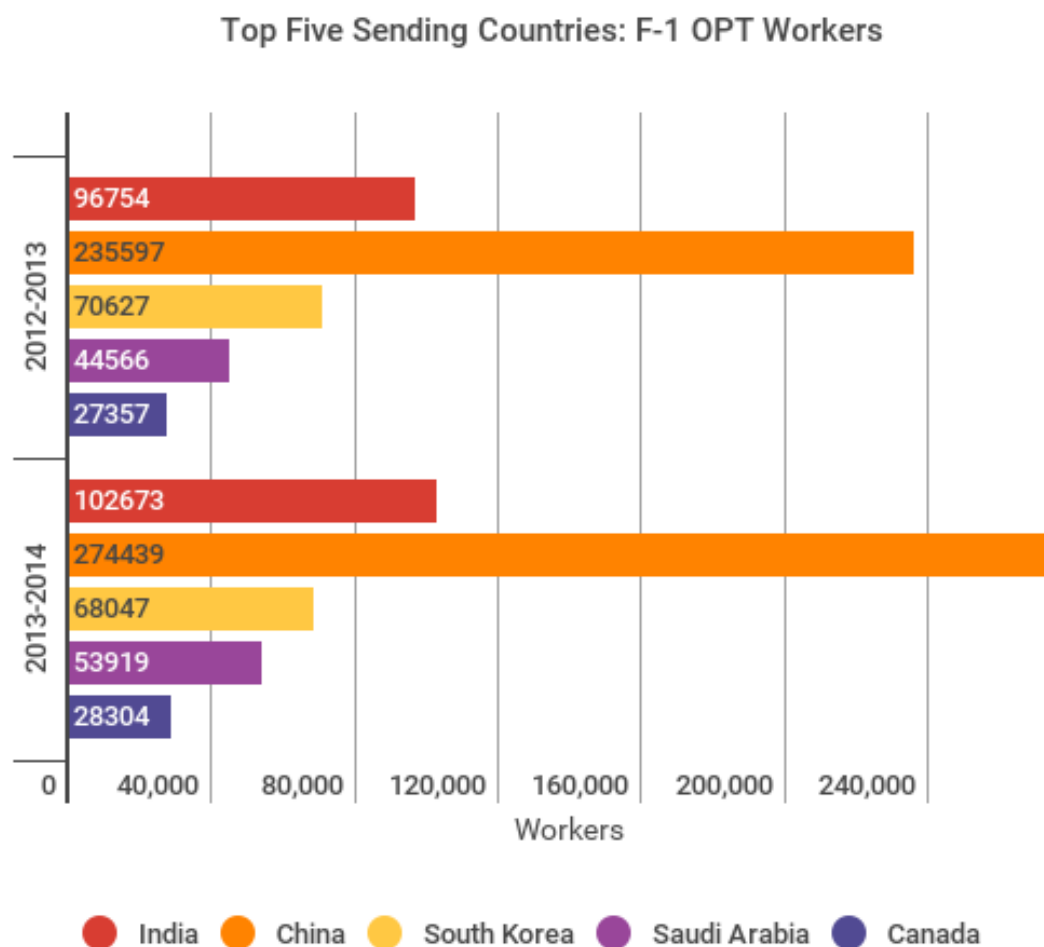
A [Social Security Administration study](#) found that in 2005, 24,504 F-1 students had obtained new Social Security numbers. Furthermore, the agency estimated that 96% of them had “accepted or were promised employment on campus,” many as teaching assistants or food service workers.<sup>98</sup> The three countries of origin with the most F-1 students working were India, China and South Korea.<sup>99</sup>

While USCIS has information regarding the number of F-1 students who submit I-765s, for whom they plan to work, and how many EADs are ultimately approved and denied, this information is not regularly published either. However, through a Freedom of Information Act request, journalists received this information regarding OPT

from USCIS and have posted a [searchable database of OPT employment](#) online. The Institute of International Education (IIE), annually estimates the number of F-1 student workers with OPT programs, based on its [Open Doors](#) survey of U.S. colleges and universities. While this information from IIE provides a very helpful snapshot of the scope and growth of the OPT program, it does not include all schools that have students enrolled in F-1 programs.

### 1. OPTIONAL PRACTICAL TRAINING DATA

According to IIE, the number of OPT students has more than tripled in the span of a decade, jumping from 29,340 participants in 2003/04 to 105,997 in 2013/14.<sup>100</sup> In 2014, the top five sending countries for OPT workers were India, China, South Korea, Saudi Arabia, and Canada.<sup>101</sup>



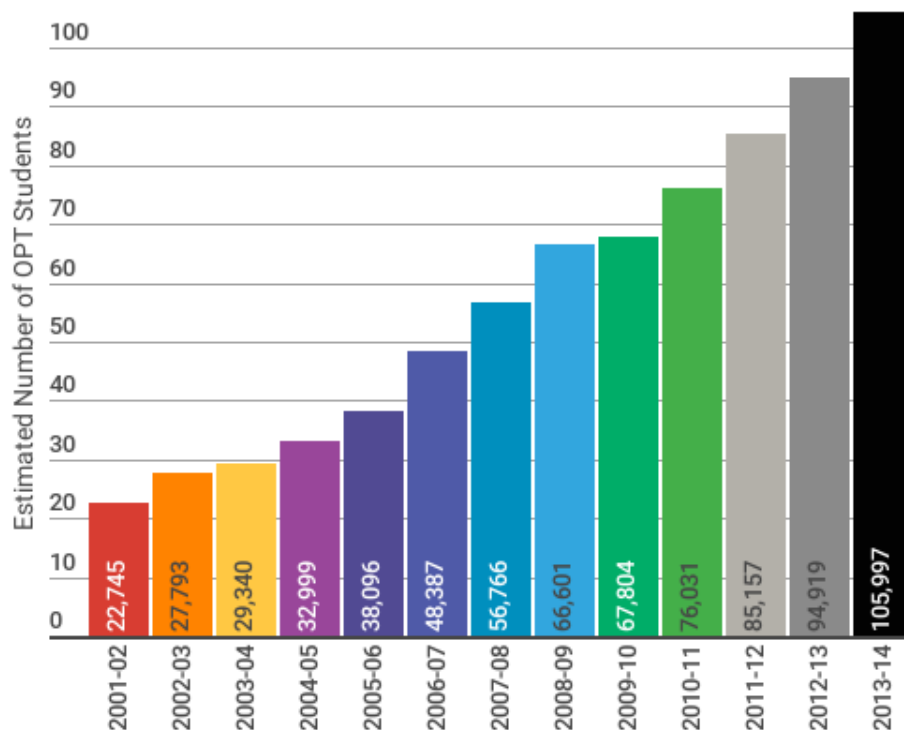
SOURCE: Institute of International Education, "Open Doors Data: Fact Sheets by Country: 2014", available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/2014> (last visited May 2015).



### DIGGING DEEPER: AGE AND GENDER DATA NOT AVAILABLE

The age and gender of F-1 students is not published. Because all biographical data is updated, maintained and compiled on SEVIS, however, age and gender statistics are available to the government, including the age and gender of F-1 students who are working, where they are working, and whether they are doing OPT programs and obtaining STEM extensions. The SEVIS quarterly reports published by ICE do not contain a detailed breakdown with this information.

F-1 OPT Workers Estimate



Source: Institute of International Education "Open Doors Data, International Students: Academic Level, 1954/55 -2009/10", available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/1954-2010> (May 2015); Institute of International Education, "Open Doors Data. International Students: Academic Level, 2012/13 – 2013/14", available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/2012-14> (May 2015).

## V. F-1 WORKERS' RIGHTS

F-1 program regulations do not contain any significant worker protection rules. There is no specific wage to be paid, no work guarantee and no special remedies for students who lose their jobs through no fault of their own. The lack of regulatory rights for F-1 students may be due in part to the fact that work should be secondary to academics. Like any workers, however, F-1 students are protected by other federal or state employment statutes or common law rights that may apply, including but not limited to the Fair Labor Standards Act, the Age Discrimination Employment Act, Title VII of the Civil Rights Act, the Trafficking Victims Protection Act, the Racketeer Influenced Corrupt Organizations Act, and state wage and hour and discrimination laws. Whether specific statutes or common law rights apply to any given worker will depend on the facts of each particular situation.

### **DIGGING DEEPER: NO ANTI-TRAFFICKING EDUCATION FOR F-1 STUDENTS**

During the visa application process, the Department of State apparently does not inform F-1 students about their legal rights in the U.S. The Department of State developed an anti-trafficking brochure to educate temporary nonimmigrant workers, but it refers only to certain visa categories, to wit, A-3, G-5, B-1, J-1, H-1B, H-2A and H-2B workers. F-1 students who may work are not included.

## VI. F-1 ENFORCEMENT

Given the lack of regulatory rights for F-1 workers, it is not surprising that there is not much of an enforcement scheme. While the U.S. Department of Homeland Security closely monitors the status and movements of F-1 students, the primary enforcement focus is to investigate student violators and prosecute visa fraud. Because there is no specific role for the U.S. Department of Labor in the application process, its enforcement authority with regard to F-1 is almost nonexistent. If there is any sort of discrimination, the Equal Employment Opportunity Commission may be able to pursue the case. State agencies customarily will have the authority to enforce any state laws that apply. To the extent that there is an employment contract or applicable federal or state statute allowing a private lawsuit, F-1 workers may enforce their rights in court, just like any other U.S. worker.

### A. U.S. DEPARTMENT OF HOMELAND SECURITY

Because DHS overwhelmingly allots its time and resources to investigating F-1 students in violation of their visa requirements, it makes little effort to ensure that F-1 students who work are not being exploited on the job. While DHS regularly publishes its successes in deporting student status violators, there is simply not much information out there regarding F-1 student worker abuse. Several DHS enforcement actions have surrounded sham schools that charge foreign individuals money to enroll in school, help them get F-1 visas, approve work, and then never require attendance at classes. While each enforcement action has been slightly different, in many of these cases, school officials are indicted, sentenced to jail time, and forced to pay penalties to the U.S. government, but the student victims just get deported.

Further, a 2014 [Government Accountability Office \(GAO\) report](#) found that DHS and specifically Immigration and Customs Enforcement (ICE), its sub-agency charged with monitoring and enforcement of the Optional Practical Training (OPT) work program for F-1 students, had failed to address risks of the program and continued to maintain insufficient oversight. GAO found that ICE failed to collect information and establish monitoring mechanisms to allow foreign students to comply with the legal requirements of the program. ICE did not even have complete information on which students with OPT approval were actively working and whether their position was related to their studies as required by ICE regulations.<sup>102</sup>

#### **DIGGING DEEPER: EXAMPLES OF DHS ENFORCEMENT ACTIONS**

In 2011, DHS and the U.S. Department of Justice closed down a school based in California, Tri-Valley University (TVU), for immigration fraud. TVU charged its F-1 students fees, did not require class attendance, and placed them in low-wage retail jobs scattered around the country.<sup>103</sup> Just 53 of the 1,555 F-1 students lived within commuting distance of TVU. Many of the student off-campus job placements violated the F-1 visa work rules, including:

- a Business Administration student worked full time at a Houston tobacco shop;
- Health Care Administration students worked full time at convenience and department stores; and
- a computer science major worked at a dollar retail store.<sup>104</sup>

As a result of the investigation, TVU shut down and the [owner was indicted](#) for visa fraud, money laundering and alien harboring.<sup>105</sup> Some of the TVU students were arrested, put in removal proceedings and tagged with electronic tracking devices.<sup>106</sup> All told, about 1,000 students had to leave the country, scramble to transfer, or face the prospect of deportation.<sup>107</sup> It is unknown if any of the fees the students paid to TVU were returned to them.

As another example, at California Union University, foreign students from more than 20 different countries paid fees ranging from \$600 to more than \$10,000 to obtain student visas, despite the fact that they never attended class.<sup>108</sup> The head of the school was sentenced to a year in prison and was ordered to forfeit 4 million dollars to the U.S. government. That same year, the [Florida Language Institute](#) was indicted for essentially selling foreign individuals the paperwork necessary to obtain F-1 visas but not requiring attendance at classes.<sup>109</sup> One of the school officials made at least \$600,000 off the scheme. At the [sentencing hearing for visa fraud](#), the judge sentenced the guilty school official to 15 months imprisonment and made her pay a fine of \$5000 and forfeit \$600,000 in money and property to the U.S. government. It is unclear what happened to the workers in either of these cases.

A more recent example involves three Indian Americans who ran fraudulent for-profit colleges in the New York tri-state region [pled guilty in May 2015](#) to conspiracy to commit student visa fraud and conspiracy to commit financial aid fraud. The three fraudulently depicted the “Micropower Career Institute” (MCI) and the “Institute for Health Education” (IHE) as “legitimate” institutes of higher learning and also fraudulently claimed that foreign students took courses full time to immigration officials. The foreign students did not attend the required number of classes, but the colleges collected millions of dollars from the students in tuition nonetheless. The three also falsified documents to the Department of Education (ED) to avoid returning financial aid funds that the Department of Education had disbursed to MCI for domestic students who had dropped out. The three agreed to forfeit \$7,400,000 in proceeds they made through the crimes and \$1,000,000 in restitution to ED and face prison sentences of up to ten years.<sup>110</sup>

### DIGGING DEEPER: NO ENFORCEMENT ROLE FOR U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor (USDOL) has no defined enforcement role regarding the F-1 visa program. To be sure, the lack of any wage-based regulations or labor certification process for the F-1 program leaves USDOL with little to enforce in that arena. In other nonimmigrant visa programs, companies that violate the labor certification process may face stiff penalties. Obviously, F-1 employers who do not need to meet those labor market tests are not included within that enforcement regime. If an F-1 student worker claims that there has been a violation of federal minimum wage laws, though, USDOL may get involved as the agency charged with enforcing those laws if they apply.

## B. PRIVATE LITIGATION

F-1 student workers themselves do not have the authority to enforce the scant F-1 regulations in court. However, to the extent that there is an enforceable employment contract, applicable federal or state statute, or common law claim, an F-1 student worker may file a lawsuit to enforce their rights and have their day in court in just like any other U.S. worker.

### 1. ACCESS TO COUNSEL

F-1 students have similar access to counsel issues as other groups of nonimmigrant workers in that lawyers may not be as willing to take their cases. However, because F-1 students are permitted to stay in the U.S. for the duration of their studies, their access to counsel issues are not as serious as their more temporary, transient counterparts in other visa programs such as H-2A, H-2B, and J-1.

#### A) LEGAL SERVICES LAWYERS

Federally funded lawyers may represent individuals with an income below a certain financial level (usually 125% of the federal poverty guideline) and only certain classes of immigrants.<sup>111</sup> In most cases individuals with F-1 visas will not be eligible for representation by an LSC grantee because of these financial and immigration restrictions. However, there may be an exception if the student is a victim of domestic violence, human trafficking or another crime.<sup>112</sup>

## VII. F-1 STUDENTS IN THE U.S. WORKFORCE – ISSUES

Issues involved with the F-1 program involve the effect of student employment on U.S. workers and the fact that there are no remedies for students who are victims of visa fraud perpetrated by sham schools. Because there are no wage requirements for F-1 students who work and there is no labor market test, it creates a situation where overt discrimination against U.S. workers is possible. There have not been many studies of workers' rights abuses in the F-1 program.

### A. LITTLE PROTECTION FOR U.S. WORKERS

The F-1 program regulations contain few protections for U.S. workers. Regarding on-campus work, the regulations state that F-1 students may not displace U.S. workers.<sup>113</sup> However, no federal agency is accountable to ensure this prohibition is enforced. The only other U.S. worker protection is that employment authorization for any F-1 students ceases whenever there is a labor dispute involving a work stoppage or strike at the same workplace.<sup>114</sup> Even so, employers who hire F-1 students do not have to adhere to any labor market tests, wage standards or U.S. worker recruitment efforts.<sup>115</sup> Economists have raised [many concerns](#) with the effect of OPT employment on the U.S. labor market, including suppressing wages and even contributing to U.S. unemployment rates.

#### DIGGING DEEPER: 1990S F-1 LABOR AND WAGE ATTESTATION PILOT PROGRAM

From 1990 through 1996, employers who hired F-1 students to work in off-campus jobs were required to file an attestation on Form ETA-9034 with the U.S. Department of Labor (USDOL) to prohibit U.S. worker displacement.<sup>116</sup> Employers had to attest that they had “recruited for at least 60 days for the position(s) and that a sufficient number of U.S. workers were not able, qualified, and available for the position(s).”<sup>117</sup> Moreover, employers had to attest that they would pay the F-1 student(s) and other similarly employed worker(s) the “required wage rate.”<sup>118</sup> The required wage was the higher of the actual “establishment wage rate for the occupation” or the prevailing wage rate in the geographic area of intended employment.<sup>119</sup> USDOL’s Wage and Hour Division had enforcement authority over the attestation provisions but it is unknown whether these provisions were ever actually enforced.<sup>120</sup> The attestation pilot program ended on September 30, 1996.<sup>121</sup> In 2002, references to the pilot program were finally removed from the F-1 program regulations.<sup>122</sup> Apparently, neither Congress nor DHS have made any serious effort to re-start a similar labor and wage attestation for F-1 off-campus employment.

### B. FOREIGN RECRUITMENT

F-1 students may find out about the opportunity to study (and work) in the U.S. through third party recruiters. These recruiters may be individuals or business entities and may be based either in the U.S. or abroad. Some U.S. colleges and universities rely on third-party recruiters to help steer foreign students to their schools for a fee, paid either by the student, the school, or both.<sup>123</sup> By law, approved schools may only advertise that: “This school is authorized under Federal law to enroll nonimmigrant alien students.”<sup>124</sup> As with other nonimmigrant visa programs, there is a risk that recruiters will misrepresent the F-1 visa program and make false promises. Some overseas college recruiters even boast on-line about immediately allowing extended periods of work. For

example, one recruiter in India suggests that students will be employed quickly upon enrollment, students will work in entry-level jobs “paying \$8 to \$10 per hour that require “little work experience, skills” and can work “40+ hours per week.”<sup>125</sup> There are no rules that pertain to recruiters specifically. For instance, unlike other nonimmigrant programs, there is no rule prohibiting recruiters from charging fees to the workers or making them responsible for misrepresenting the F-1 visa program’s rules on employment.<sup>126</sup>

### C. UNACCREDITED SCHOOLS

DHS approves unaccredited schools under certain conditions.<sup>127</sup> However, in 2011, several [investigations](#) uncovered that such schools were often just [visa mills](#). Indeed, unaccredited schools have been a breeding ground for widespread immigration fraud. Some schools “usher in thousands of foreign students and generate millions of dollars in profits because they have the power, bestowed by the U.S. government, to help students get visas.”<sup>128</sup>

## ENDNOTES

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<sup>1</sup> 8 U.S.C. §1101(a)(15)(f)(i).

<sup>2</sup> SEVIS is a computer database designed to track information about students and exchange visitors, which include workers with a J-1 visa. See 22 C.F.R. Part 62, Subpart F.

<sup>3</sup> Institute of International Education. "Open Doors Data. International Students: Academic Level, 2012/13 – 2013/14." Available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/2012-14> (last visited May 2015).

<sup>4</sup> 8 C.F.R. § 214.2(f)(5)(i). F-1 students who attend public high schools are restricted to an aggregate of 12 months of study.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> 8 C.F.R. § 214.2(f)(3); 9 FAM 41.54 N21.

<sup>8</sup> 9 FAM 41.54 N21.1 a.

<sup>9</sup> 8 C.F.R. § 214.2(f)(15)(i); 9 FAM 41.61 N13.3.

<sup>10</sup> 8 C.F.R. § 214.2(f)(15)(ii); 8 C.F.R. § 214.2(f)(15)(ii)(A). However, the F-2 spouse and child may engage in study that is vocational or recreational in nature

<sup>11</sup> 8 C.F.R. § 214.2(f)(15)(ii)(B).

<sup>12</sup> 8 C.F.R. § 214.2(f)(15)(ii)(C).

<sup>13</sup> 8 C.F.R. § 214.3 (setting forth requirements for DHS certification for schools).

<sup>14</sup> 8 C.F.R. § 214.3(h)(3).

<sup>15</sup> U.S. Department of Homeland Security, ICE, SEVP, SEVIS General Summary Quarterly Review (July 3, 2013), available at <http://www.ice.gov/doclib/sevis/pdf/by-the-numbers.pdf>. The number of authorized schools is published quarterly.

<sup>16</sup> 8 C.F.R. § 214.2(f)(6)(i)(G).

<sup>17</sup> U.S. Department of Homeland Security, ICE, Decision by SEVP Director, Full Course of Study: California Community Colleges Crisis, (Nov. 12, 2009), available at [http://www.nafsa.org/File/\\_regxii/ca\\_cc\\_sevpanouncement.pdf](http://www.nafsa.org/File/_regxii/ca_cc_sevpanouncement.pdf).

<sup>18</sup> 22 C.F.R. 62 Subpart F – Student and Exchange Visitor Information System.

<sup>19</sup> 8 C.F.R. § 214.2(j)(1)(vii).

<sup>20</sup> 8 C.F.R. § 214.2(f)(17).

<sup>21</sup> 9 FAM 41.61.

<sup>22</sup> 9 FAM 41.61 N1, N5.1; U.S. Department of Homeland Security, USCIS, Students and Employment, (Aug. 19, 2010), available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7...>

<sup>23</sup> 8 C.F.R. § 214.2(f)(1)(i)(a); 8 U.S.C. § 1231(b).

<sup>24</sup> U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2013, available at [http://www.travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (last visited May 2015).

<sup>25</sup> 8 C.F.R. § 214.2(f)(2).

<sup>26</sup> 8 C.F.R. § 214.13(a)(1); U.S. Department of Homeland Security, ICE, SEVP, I-901 Student and Exchange Visitor Information System, available at <http://www.ice.gov/sevis/i901/> (last visited June 2013).

<sup>27</sup> 8 C.F.R. § 214.13(g).

<sup>28</sup> 8 C.F.R. § 214.13(e). Generally, status is maintained from the time of obtaining the visa through the time when the student completes the academic program, which can include Optional Practical Training (OPT), or when the student stops going to school, changes immigration status, or departs the United States for an extended period of time.

<sup>29</sup> 8 U.S.C. §1225; 8 C.F.R. Part 235, Inspection of Persons Applying for Admission; see also Austin T. Fragomen, Jr., Alfred J. Del Rey, Jr., and Sam Bernsen, Immigration Law and Business § 2:11 (2010) ("The issuance of a nonimmigrant visa gives the alien permission to apply for admission to the United States at a port of entry...The visa does not assure an alien that he or she will be admitted to the United States, however; it merely indicates that a consular officer has found the alien eligible for temporary admission to the United States and not inadmissible under § 212(a) of the INA, 8 U.S.C.A. § 1182(a).").

<sup>30</sup> 8 C.F.R. § 214.2(f)(9)(i).

<sup>31</sup> 9 FAM 41.61 N13.1.

<sup>32</sup> 8 C.F.R. § 214.2(f)(9)(i).

<sup>33</sup> U.S. Department of Homeland Security, ICE, Module 4: Employment and Practical Training, available at <http://www.ice.gov/exec/sevp/Module4.htm>.

<sup>34</sup> 8 C.F.R. § 214.2(f)(9)(i).

<sup>35</sup> U.S. Department of Homeland Security, ICE, Module 4: Employment and Practical Training, available at <http://www.ice.gov/exec/sevp/Module4.htm>. DHS advises schools to have students "obtain a letter from the prospective employer concerning the nature of the job and the number of work hours." However, neither the employers, students, nor the schools are required to show that U.S. workers will not actually be displaced by the foreign-student workers.

<sup>36</sup> 8 C.F.R. § 214.2(f)(9)(ii)(C).



- <sup>37</sup> Id.
- <sup>38</sup> 8 C.F.R. § 214.2(f)(9)(ii) and (iii).
- <sup>39</sup> 8 C.F.R. § 214.2(f)(9)(ii)(D)(F)(1).
- <sup>40</sup> 8 C.F.R. § 214.2(f)(9)(ii)(D)(F)(2).
- <sup>41</sup> Id.
- <sup>42</sup> Id. The employment authorization is automatically terminated whenever the student fails to maintain status.
- <sup>43</sup> 8 C.F.R. § 214.2(f)(9)(ii)(A).
- <sup>44</sup> Id.
- <sup>45</sup> U.S. Department of Homeland Security, ICE, SEVP, FAQ: Off-Campus Basic Guidelines, available at [http://www.ice.gov/sevis/employment/faq\\_f\\_off1.htm#\\_1\\_3](http://www.ice.gov/sevis/employment/faq_f_off1.htm#_1_3).
- <sup>46</sup> 8 C.F.R. § 214.2(f)(9)(i), (ii).
- <sup>47</sup> 8 C.F.R. § 214.2(f)(5)(v).
- <sup>48</sup> Id.
- <sup>49</sup> 8 C.F.R. § 214.2(f)(10)(i).
- <sup>50</sup> Id.
- <sup>51</sup> Id.
- <sup>52</sup> U.S. Department of Homeland Security, ICE, Module 4: Employment and Practical Training, available at <http://www.ice.gov/exec/sevp/Module4.htm>.
- <sup>53</sup> 8 C.F.R. § 214.2(f)(10)(i) (“Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training.”).
- <sup>54</sup> Id.
- <sup>55</sup> 8 C.F.R. § 214.2(f)(10)(i) and 9 FAM 41.61 N13.4. See also T. Bartlett, K. Fischer, and J. Keller, Chronicle of Higher Education, Little Known Colleges Exploit Visa Loopholes to Make Millions off Foreign Students, (March 20, 2011), available at <http://chronicle.com/article/Little-Known-Colleges-Exploit/126822/>.
- <sup>56</sup> 9 FAM 41.61 N13.4-1.
- <sup>57</sup> U.S. Department of Homeland Security, ICE, Module 4: Employment and Practical Training, available at <http://www.ice.gov/exec/sevp/Module4.htm>.
- <sup>58</sup> 8 C.F.R. § 214.2(f)(10)(i).
- <sup>59</sup> B. McMurtrie, Chronicle of Higher Education, Foreign students pour back into the U.S., (Nov. 21, 2008) available at <http://www.uic.edu/classes/actg/actg593/Readings/Education/Foreign%20Stu...>
- <sup>60</sup> 8 C.F.R. § 214.2(f)(10)(ii)(A).
- <sup>61</sup> Id.
- <sup>62</sup> 8 C.F.R. § 214.2(f)(11)(i)(B)(1).
- <sup>63</sup> 8 C.F.R. § 214.2(f)(10)(ii)(A)(1), (2).
- <sup>64</sup> 8 C.F.R. § 214.2(f)(10)(ii)(A)(3).
- <sup>65</sup> Id., 8 C.F.R. § 214.2(f)(10)(ii)(C).
- <sup>66</sup> 8 C.F.R. § 214.2(f)(11)(i)(B).
- <sup>67</sup> 8 C.F.R. § 214.2(f)(11)(i), (ii) (“The DSO must update the student’s SEVIS record with the DSO’s recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment.”).
- <sup>68</sup> 8 C.F.R. § 214.2(f)(11)(i)(A), (B).
- <sup>69</sup> Id.
- <sup>70</sup> 8 C.F.R. § 214.1(f)(11)(iii).
- <sup>71</sup> 8 C.F.R. § 214.2(f)(11)(i)(D) (“Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.”).
- <sup>72</sup> 8 C.F.R. § 214.1(f)(11)(iii)(B), (C).
- <sup>73</sup> 8 C.F.R. § 214.2(f)(10)(ii)(C).
- <sup>74</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, STEM-Designated Degree Program List, 2011 Revised List, available at <http://www.ice.gov/doclib/sevis/pdf/stem-list-2011.pdf>.
- <sup>75</sup> 9 FAM 41.61 N13.5-1.
- <sup>76</sup> 8 C.F.R. § 214.2(f)(10)(ii)(A).
- <sup>77</sup> 8 C.F.R. § 214.2(f)(11)(i)(C) (“If a student timely and properly files an application for a 17-month OPT extension, but the Form I-766, Employment Authorization Document, currently in the student’s possession, expires prior to the decision on the student’s application for 17-month OPT extension, the student’s Form I-766 is extended automatically.”). See also U.S. Department of Homeland Security, Immigration and Customs Enforcement, SEVP Policy Guidance: 0801-2, at 11-12 (Apr. 25, 2008) available at [http://www.ice.gov/doclib/sevis/pdf/opt\\_policy\\_guidance\\_04062009.pdf](http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_04062009.pdf).
- <sup>78</sup> U.S. Department of Homeland Security, USCIS, Extension of Optional Practical Training for Qualified Students, (April 10, 2008), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176....>
- <sup>79</sup> R. Wasem, Congressional Research Service, U.S. Immigration Policy on Temporary Admissions, at 29 (Feb. 28, 2011), available at <http://fpc.state.gov/documents/organization/158526.pdf>.

<sup>80</sup> Allissa Wickham, Law 360, “Tech Union Naps \$42K from DHS in Foreign Student Work Row” (August 2016), available at <https://www.law360.com/articles/826278>.

<sup>81</sup> 8 C.F.R. § 214.2(f)(5)(l); 9 FAM 41.61 N10.

<sup>82</sup> 8 C.F.R. § 214.2(f)(5)(iv); 9 FAM 41.61 N13.5-2.

<sup>83</sup> 8 C.F.R. § 214.2(f)(5)(vi)(A); 9 FAM 41.61 N13.5-2; U.S. Department of Homeland Security, USCIS, Extension of Post-Completion Optional Practical Training (OPT) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations, (April 1, 2011), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176...>

<sup>84</sup> U.S. Department of Homeland Security, ICE, SEVP Policy Guidance: 0801-2, at 17, (Apr. 25, 2008) available at [http://www.ice.gov/doclib/sevis/pdf/opt\\_policy\\_guidance\\_04062009.pdf](http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_04062009.pdf).

<sup>85</sup> 8 C.F.R. § 214.2(f)(18)(iv).

<sup>86</sup> 8 C.F.R. § 214.2(f)(18). This exception does not apply to Canadians and Mexicans who reside in the U.S. or enroll in school full time.

<sup>87</sup> 26 U.S.C. § 3121(b)(19)(FICA exemption) and 26 U.S.C. § 3306(c)(19) (FUTA exemption); see also Internal Revenue Service, Withholding of Tax on Nonresident Aliens and Foreign Entities, 2011, available at <http://www.irs.gov/pub/irs-pdf/p515.pdf>.

<sup>88</sup> U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2013, available at [http://www.travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (last visited May 2015).

<sup>89</sup> U.S. State Department, FY 1997-2013 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (May 2015).

<sup>90</sup> Institute of International Education “Open Doors Data, International Students: Academic Level, 1954/55 -2009/10”, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/1954-2010> (May 2015); Institute of International Education, “Open Doors Data. International Students: Academic Level, 2012/13 – 2013/14”, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/2012-14> (May 2015).

<sup>91</sup> U.S. State Department, FY 1997-2013 NIV Detail Table, available at [http://travel.state.gov/visa/statistics/nivstats/nivstats\\_4582.html](http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html) (last visited May 2015).

<sup>92</sup> U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions>. (May 2015). One single individual may be counted many times over in this total count because each admission is counted.

<sup>93</sup> Id.

<sup>94</sup> Telephone and email correspondence with Office of Immigration Statistics employees, U.S. Department of Homeland Security (2011, 2013).

<sup>95</sup> Ted Robbins, U.S. Aims To Track Foreigners Who Arrive, But Never Leave, National Public Radio (May 1, 2013), available at <http://www.npr.org/2013/05/01/180338462/u-s-aims-to-track-foreigners-who...>

<sup>96</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, Student and Exchange Visitor Program, Mapping SEVIS by the Numbers, <https://studyinthestates.dhs.gov/sevis-by-the-numbers> (last visited May 2015)

<sup>97</sup> Victor Cerda, DHS, ICE, Tracking International Students in Higher Education: A Progress Report, at 5, Testimony before the House Committee on Education and the Workforce, (Mar. 17, 2005), available at <http://www.ice.gov/doclib/news/library/speeches/cerda031705.pdf> (last visited June 2013).

<sup>98</sup> Social Security Administration, Office of the Inspector General, Congressional Response Report: Compliance with Employment Evidence Requirements for F-1 Students, No. A-08-06-16075, p. 4 (July 2006), available at <http://www.ssa.gov/oig/ADOBEPDF/A-08-06-16075.pdf>.

<sup>99</sup> Id. at p. A-1.

<sup>100</sup> Institute of International Education “Open Doors Data, International Students: Academic Level, 1954/55 -2009/10”, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/1954-2010> (May 2015); Institute of International Education, “Open Doors Data. International Students: Academic Level, 2012/13 – 2013/14”, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic-Level/2012-14> (May 2015).

<sup>101</sup> Institute of International Education, “Open Doors Data: Fact Sheets by Country: 2014”, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/2014> (last visited May 2015).

<sup>102</sup> U.S. Government Accountability Office, Student And Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization, GAO-14-356 (February 2014)), available at <http://www.gao.gov/products/GAO-14-356>.

<sup>103</sup> U.S. Department of Homeland Security, ICE, Student and Exchange Visitor Program Notice of Intent to Withdraw, (Jan. 19, 2011), available at <http://www.laborimmigration.com/wp-content/uploads/2011/02/Tri-Valley-Un...>

<sup>104</sup> U.S. Department of Homeland Security, ICE, Student and Exchange Visitor Program Notice of Intent to Withdraw, at 13, (Jan. 19, 2011) available at <http://www.laborimmigration.com/wp-content/uploads/2011/02/Tri-Valley-Un...>

<sup>105</sup> U.S. Government Accountability Office, Student And Exchange Visitor Program DHS Needs to Assess Risks and Strengthen Oversight Functions, GAO-12-572, p. 23 (June 2012); U.S.A. v. Real Property Located at 405 Boulder Ct, et al., No. 11-CV-0258 (N.D. Cal. Jan. 19, 2011) (Complaint for Forfeiture), available at <http://www.scribd.com/doc/47997837/CV-11-258-Forfeiture-Complaint>; U.S. Department of Justice, Pleasanton University President Charged in 33-Count Indictment for Student Visa Fraud Scheme, (May 2, 2011) available at [http://www.justice.gov/usao/can/press/2011/2011\\_05\\_02\\_su.charged.press.html](http://www.justice.gov/usao/can/press/2011/2011_05_02_su.charged.press.html).

<sup>106</sup> L. Krieger, Universities or Visa Mills?, San Jose Mercury News (July 16, 2011), available at [http://www.mercurynews.com/top-stories/ci\\_18492754?nclick\\_check=1](http://www.mercurynews.com/top-stories/ci_18492754?nclick_check=1).

<sup>107</sup> U.S. Department of Homeland Security, ICE, Attention Former Tri-Valley University Students, (Feb. 8, 2011), available at <http://www.ice.gov/sevis/tri-valley-110118.htm>.

<sup>108</sup> U.S. Department of Homeland Security, ICE, Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school, News Release (June 13, 2011), available at <http://www.ice.gov/news/releases/1106/110613santaana.htm>

<sup>109</sup> C. Gentile, School is Linked to Visa Fraud, New York Times (March 4, 2010), available at <http://www.nytimes.com/2010/03/05/us/05fraud.html>.

<sup>110</sup> U.S. Department of Justice, Three Senior Executives of For-Profit Schools Plead Guilty in Manhattan Federal Court To Participating In Student Visa And Financial Aid Fraud Schemes (April 2015), available at <https://www.justice.gov/usao-sdny/pr/three-senior-executives-profit-schools-plead-guilty-manhattan-federal-court>.

<sup>111</sup> 45 C.F.R. Part 1611 (Financial Eligibility) and Part 1626 (Restrictions on Legal Assistance to Aliens).

<sup>112</sup> See, e.g., Legal Services Corporation Program Letter 05-2 (Oct. 6, 2005), available at <http://www.lsc.gov/sites/default/files/Grants/pdfs/Progltr05-2.pdf>.

<sup>113</sup> 8 C.F.R. § 214.2(f)(9)(i).

<sup>114</sup> 8 C.F.R. § 214.2(f)(14).

<sup>115</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, SEVP Policy Guidance: 0801-2, at 17 (Apr. 25, 2008) (suggesting that students may work as volunteers or unpaid interns, within legal limits), available at [http://www.ice.gov/doclib/sevis/pdf/opt\\_policy\\_guidance\\_04062009.pdf](http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_04062009.pdf).

<sup>116</sup> See generally, 29 C.F.R. § 508.1; 20 C.F.R. Part 655, subparts J and K.

<sup>117</sup> 20 C.F.R. § 655.940(d).

<sup>118</sup> 20 C.F.R. § 655.940(e).

<sup>119</sup> 20 C.F.R. § 655.920.

<sup>120</sup> 20 C.F.R. § 655.1000.

<sup>121</sup> 20 C.F.R. §§ 655.900(d), 655.910(e).

<sup>122</sup> 67 Fed. Reg. 76256, 76264 (Dec. 11, 2002) (“Finally, this final rule makes conforming amendments . . . to remove the reference to filing a wage and labor attestation for off-campus employment. As indicated in the proposed rule, the requirement for a wage and labor attestation was part of a pilot program that has sunset.”).

<sup>123</sup> D. Golden, China Rush to U.S. Colleges Reveals Predatory Fees for Recruits, (May 22, 2011), available at <http://www.bloomberg.com/news/2011-05-22/china-rush-to-u-s-colleges-reve...>

<sup>124</sup> 8 C.F.R. § 214.3(j).

<sup>125</sup> Agog Overseas, Work Study Visa, available at <http://agogoverseas.com/USA/work-study-visa.html>.

<sup>126</sup> Compare 20 C.F.R. § 655.731(c)(9)(ii) (H-1B workers); 20 C.F.R. § 655.135(j) (H-2A workers); 20 C.F.R. § 655.22(j) (H-2B workers); and 22 C.F.R. § 62.32(l)(1)(iii) (while J-1 Summer Work Travel recruiters are now required to reveal the amount of recruitment fees, the State Department regulatory framework does not limit the fee amounts).

<sup>127</sup> U.S. Department of State, ICE, SEVP Fact Sheet: Documents Accepted in Lieu of Accreditation, (May 10, 2006) available at [http://www.ice.gov/doclib/sevis/pdf/In\\_lieu\\_of\\_accreditation\\_fs.pdf](http://www.ice.gov/doclib/sevis/pdf/In_lieu_of_accreditation_fs.pdf).

<sup>128</sup> B. McMurtrie, Chronicle of Higher Education, Foreign students pour back into the U.S., (Nov. 21, 2008), available at <http://www.uic.edu/classes/actg/actg593/Readings/Education/Foreign%20Stu...>