

that the Department of State reserves the right to review a request that is not timely filed due to extraordinary circumstance.

(4) *Final decision.* The Department of State anticipates it will respond to requests for Department of State authorization to extend the three year period of program participation permitted under §514.20(i) within 30 days of Department of State receipt of such request and supporting documentation. Such response shall constitute the Department of State's final decision.

[58 FR 15196, Mar. 19, 1993; 58 FR 48448, Sept. 16, 1993, as amended at 61 FR 29287, June 10, 1996. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 62.21 Short-term scholars.

(a) *Introduction.* These regulations govern scholars coming to the United States for a period of up to four months to lecture, observe, consult, and to participate in seminars, workshops, conferences, study tours, professional meetings, or similar types of educational and professional activities.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign and American scholars. It does so by providing foreign scholars the opportunity to exchange ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and promote professional relationships and communications.

(c) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* programs which offer foreign nationals the opportunity to engage in short-term visits for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(d) *Visitor eligibility.* A person participating in the Exchange Visitor Program under this section shall satisfy the definition of a short-term scholar as set forth in §514.4.

(e) *Cross-cultural activities and orientation.* Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing

cross-cultural activities and orientation as set forth in §514.8(d) and §514.10(c). However, sponsors are encouraged to provide such programs for short-term scholars whenever appropriate.

(f) *Location of exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form IAP-66. A participant may also lecture or consult at institutions not listed on the Form IAP-66 if his or her Responsible Officer issues a written authorization of such activity. Such written authorization must be attached to the participant's Form IAP-66.

(g) *Duration of participation.* The short-term scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed six months. Programs under this section are exempted from §514.8(b) governing the minimum duration of a program. Extensions beyond the duration of participation are not permitted under this category.

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§ 62.22 Trainees.

(a) *Introduction.* These regulations govern all exchange visitor programs under which foreign nationals are provided with opportunities for receiving training in the United States. Regulations dealing with training opportunities which may, under certain conditions, be authorized for foreign students who are studying at post-secondary accredited educational institutions in the United States are found at §514.23. Regulations governing medical trainees are found at §514.27.

(b) *Purpose of training.* The primary objectives of training are to enhance the exchange visitor's skills in his or her specialty or non-specialty occupation through participation in a structured training program and to improve the participant's knowledge of American techniques, methodologies, or expertise within the individual's field of endeavor. Such training programs are also designed to enable the exchange

visitor trainee to understand better American culture and society and to enhance American knowledge of foreign cultures and skills by providing the opportunity for an open interchange of ideas between the exchange visitor trainees and their American counterparts. Use of the Exchange Visitor Program for ordinary employment or work purposes is strictly prohibited. For this reason the regulations in this section are designed to distinguish between receiving training, which is permitted, and gaining experience, which is not permitted unless as a component of a *bona fide* training program.

(c) *Designation of training programs.*

(1) The Department of State groups occupations into specialty, non-specialty, or unskilled occupational categories. The Department of State will designate training programs in specialty and non-specialty occupations. Training programs in unskilled occupations or occupations in other categories which the Department of State may from time to time identify by publication in the FEDERAL REGISTER will not be designated. For purposes of these regulations, the Department of State considers the occupations listed in Appendix E to part 514 to be "unskilled occupations."

(2) For purposes of designation, the Department of State will designate specialty and skilled non-specialty occupational training programs in any of the following occupational categories:

- (i) Arts and Culture;
- (ii) Information Media and Communications;
- (iii) Education, Social Sciences, Library Science, Counseling and Social Services;
- (iv) Management, Business, Commerce and Finance;
- (v) Health Related Occupations;
- (vi) Aviation;
- (vii) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations;
- (viii) Construction and Building Trades;
- (ix) Agriculture, Forestry and Fishing;
- (x) Public Administration and Law;
- (xi) Other (Specify).

(3) Sponsors may apply for designation for training programs in any combination of specialty and/or non-spe-

cialty occupations. Once designated, the sponsor may provide training in any occupation falling within the designated category, if not otherwise prohibited from doing so. Sponsors shall provide training to exchange visitors only in the category or categories for which they have obtained Department of State designation.

(d) *Obligations of training program sponsors.* (1) Sponsors designated by the Department of State to provide training to foreign exchange visitors shall:

(i) Ensure that individuals and/or entities conducting training possess and maintain the demonstrable competence to provide training in the subjects offered to each exchange visitor.

(ii) Ensure that skills, knowledge, and competence are imparted to the trainee through a structured program of activities which are supportive and appropriate to the training experience. These may include, for example, classroom training, seminars, rotation through several departments, on-the-job training, and attendance at conferences, as appropriate.

(iii) Develop, prior to the start of training, a detailed training plan geared to defined objectives for each trainee or group of similarly-situated trainees.

(iv) Ensure that continuous supervision and periodic evaluation of each trainee is provided.

(v) Ensure that sufficient plant, equipment, and trained personnel are available to provide the training specified.

(2) Sponsors designated by the Department of State to provide training to foreign exchange visitors shall not:

(i) Provide training in unskilled occupations; or

(ii) Place trainees in positions which are filled or would be filled by full-time or part-time employees.

(e) *Use of third parties.* (1) The sponsor may utilize the services of third parties in the conduct of the designated training program. If a third party is utilized, the sponsor and the third party shall execute a written agreement which delineates the respective obligations and duties of the parties and specifically recites the third party's obligation to act in accordance with these

Department of State

§ 62.22

regulations. The sponsor shall maintain a copy of such agreement in its files.

(2) The sponsor's use of a third party in the conduct of a designated training program does not relieve the sponsor of its obligation to comply, and to ensure the third party's compliance, with all applicable regulations. Any failure on the part of the third party to comply with all applicable regulations will be imputed to the sponsor.

(f) *Application for designation of training programs.* (1) An applicant for designation as an exchange visitor training program shall demonstrate to the Department of State its ability to comply with both the General Provisions set forth in subpart A, and the obligations of training sponsors set forth in § 514.22(d).

(2)(i) An applicant shall provide the Department of State with documentary evidence of its competence to provide the training for which designation is sought.

(ii) If third parties are to be used to conduct one or more aspects of the activities for which designation is sought, the applicant shall provide the Department of State with forms and procedures which will be used by the sponsor to ensure third party compliance with all applicable regulations and fulfillment of the goals and purposes of the sponsor's exchange visitor program.

(iii) If the applicant intends to utilize the services of third parties to conduct the training, a copy of an executed third-party agreement or, if one has not yet been executed, an illustrative copy of the type of agreement the applicant intends to execute with third parties shall be submitted with the application.

(3) If the training program is accredited in accordance with § 514.22(n), the applicant shall include a copy of the accreditation in its application.

(4) The application shall include a certification that:

(i) Sufficient physical plant, equipment, and trained personnel will be dedicated to provide the training specified;

(ii) The training program is not designed to recruit and train aliens for employment in the United States;

(iii) Trainees will not be placed in positions which displace full-time or part-time employees.

(5) As to each occupational division for which the applicant seeks designation, the applicant shall indicate whether it intends to provide training in specialty or non-specialty occupations, or both.

(6) In order to meet the requirements of this subsection and to evidence the competence of the applicant and/or third parties conducting one or more aspects of the applicant's exchange visitor program to provide training, the applicant for designation may submit any one of the following types of training plans for each division for which designation is sought;

(i) If the applicant has already designed a structured training plan to use in the proposed exchange visitor program, a copy of such training plan may be submitted with the application;

(ii) If the applicant has not yet prepared a new training plan, but has been engaged previously in the type of training, directly or through third parties, for which designation is being sought, the applicant may demonstrate its capability to conduct such training by submitting a copy of a previously used training plan;

(iii) If the applicant proposes to create individualized training plans for as yet unidentified trainees, then the applicant may submit a hypothetical training plan which illustrates the training the applicant proposes to provide, directly or through third parties.

(g) *The training plan.* Each training plan required to be prepared for a trainee or group of trainees pursuant to § 514.22(d)(1)(iii) above, shall include, at a minimum,

(1) A statement of the objectives of the training;

(2) The skills to be imparted to the trainee;

(3) A copy of the training syllabus or chronology;

(4) A justification for the utilization of on-the-job training to achieve stated course competencies; and

(5) A description of how the trainee will be supervised and evaluated.

(h) *Department of State consultation with experts.* The Department of State

may consult experts whenever its examination of a training plan or its evaluation of application for designation indicates the need for such expertise in making an evaluation.

(i) *Records.* Sponsors shall retain for three years all records pertaining to individual trainees, training plans, trainee evaluations, and agreements with third parties. Such records shall be made available to the Department of State upon the Department of State's request.

(j) *Selection of trainees.* In addition to meeting the requirements of §514.10(a), trainees shall be fully qualified to participate successfully in a structured training program at a level appropriate for the individual trainee's career development. However, such training shall not be duplicative of the trainee's prior training and experience.

(k) *Duration of participation.* The duration of participation shall correspond to the length of the program set forth in the sponsor's designation. The maximum period of participation in the Exchange Visitor Program for a trainee shall not exceed 18 months total.

(l) *Financial and program disclosure.* Sponsors shall provide trainees, prior to their arrival in the United States, with:

(1) A written statement which clearly states the stipend, if any, to be paid to the trainee;

(2) The costs and fees for which the trainee will be obligated;

(3) An estimate of living expenses during the duration of the trainee's stay; and

(4) A summary of the training program which recites the training objectives and all significant components of the program.

(m) *Evaluation.* In order to ensure the quality of the training program, the sponsor shall develop procedures for the ongoing evaluation of each training segment. Such evaluation shall include, as a minimum, midpoint and concluding evaluation reports from the trainee and his or her immediate supervisor, signed by both parties. For training courses of less than three months duration, evaluation reports are required upon conclusion of the training program.

(n) *Flight training.* (1) The Department of State will consider the application for designation of a flight training program if such program complies with the above regulations, and, additionally,

(i) Is, at the time of making said application, a Federal Aviation Administration certificated pilot school pursuant to title 14, Code of Federal Regulations, part 141; and

(ii) At the time of making said application is accredited as a flight training program by an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or is accredited as a flight training program by a member of the Council on Postsecondary Accreditation; or

(iii) At the time of making said application has formally commenced the accreditation process with an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or with a member of the Council on Postsecondary Accreditation. If the application for designation is approved, such designation shall be for up to twelve-months duration, with continued designation thereafter conditioned upon completion of the accreditation process.

(2) Notwithstanding the provisions of §514.22(k), *supra*, the maximum period of participation for exchange visitors in designated flight training programs shall not exceed 24 months total. Any request for extension of time in excess of that authorized under this subsection shall be made in accordance with §514.43, *infra*.

(3) For purposes of meeting the evaluation requirements set forth in §514.22(m), sponsors and/or third parties conducting the training may utilize the same training records as are required by the Federal Aviation Administration to be maintained pursuant to 14 CFR 141.101.

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