

## **9 FAM 41.61 STUDENTS ACADEMIC AND NONACADEMIC**

*(CT:VISA-970; 06-12-2008)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.61 RELATED STATUTORY PROVISIONS**

*(CT:VISA-970; 06-12-2008)*

See INA 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)), INA 101(a)(15)(M) (8 U.S.C. 1101(a)(15)(M)), INA 214(m) (8 U.S.C. 1184(m)), and (Public Law 106-386, sec. 107).

#### **INA 101(a)(15)(F)**

- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens
- (F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) 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, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn,
  - (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and

- (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

**INA 101(a)(15)(M)**

- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens
  - (M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn,
  - (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and
  - (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

## **9 FAM 41.61 RELATED REGULATORY PROVISIONS**

*(CT:VISA-970; 06-12-2008)*

See 22 CFR 41.61

### **41.61 Students—academic and nonacademic.**

(a) *Definitions* —

- (1) *Academic*, in INA 101(a)(15)(F), refers to an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or a language training program.
- (2) *Nonacademic*, in INA 101(a)(15)(M), refers to an established vocational or other recognized nonacademic institution (other than a language training program).

(b) *Classification*.

- (1) An alien is classifiable under INA 101(a)(15)(F) (i) or (iii) or INA 101(a)(15)(M) (i) or (iii) if the consular officer is satisfied that the alien qualifies under one of those sections, and:
  - (i) The alien has been accepted for attendance for the purpose of pursuing a full course of study, or, for students classified under INA 101(a)(15) (F)(iii) and (M)(iii) Border Commuter Students, full or part-time course of study, in an academic institution approved by the Secretary of Homeland Security for foreign students under INA 101(a)(15)(F)(i) or a nonacademic institution approved under 101(a)(15)(M)(i). The alien has presented a SEVIS Form I-20, Form I-20A-B/I-20ID, Certificate of Eligibility For Nonimmigrant Student Status—For Academic and Language Students, or Form I-20M-N/I-20ID, Certificate of Eligibility for Nonimmigrant Student Status—For Vocational Students, properly completed and signed by the alien and a designated official as prescribed in regulations found at 8 CFR 214.2(F) and 214.2(M);
  - (ii) The alien possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses;
  - (iii) The alien, unless coming to participate exclusively in an English language training program, has sufficient knowledge of the English language to undertake the chosen course of study or training. If the alien's knowledge of English is inadequate, the consular officer may nevertheless find the alien so classifiable if the accepting institution offers English language training, and has accepted the alien expressly for a full course of study (or part-time course of study for Border Commuter Students)

in a language with which the alien is familiar, or will enroll the alien in a combination of courses and English instruction which will constitute a full course of study if required; and

- (iv) The alien intends, and will be able, to depart upon termination of student status.
- (2) An alien otherwise qualified for classification as a student, who intends to study the English language exclusively, may be classified as a student under INA 101(a) (15) (F) (i) even though no credits are given by the accepting institution for such study. The accepting institution, however, must offer a full course of study in the English language and must accept the alien expressly for such study.
- (3) The alien spouse and minor children of an alien who has been or will be issued a visa under INA 101(a) (15) (F) (i) or 101(a) (15) (M) (i) may receive nonimmigrant visas under INA 101(a) (15) (F) (ii) or 101(a) (15) (M) (ii) if the consular officer is satisfied that they will be accompanying or following to join the principal alien; that sufficient funds are available to cover their expenses in the United States; and, that they intend to leave the United States upon the termination of the status of the principal alien.
- (c) *Posting of bond.* In borderline cases involving an alien otherwise qualified for classification under INA 101(a) (15) (F), the consular officer is authorized to require the posting of a bond with the Secretary of Homeland Security in a sum sufficient to ensure that the alien will depart upon the conclusion of studies or in the event of failure to maintain student status.
- (d) *Electronic verification and notification.* A student's acceptance documentation must be verified by a consular official's review of the SEVIS data in the Consolidated Consular Database or via direct access to SEVIS or ISEAS prior to the issuance of an F-1, F-2, M-1 or M-3 visa. Evidence of the payment of any applicable fees, if not presented with other documentation, may also be verified through the Consolidated Consular Database or direct access to SEVIS. Upon issuance of an F or M visa, notification of such issuance must be entered into the SEVIS database.

[52 FR 42597, Nov. 5, 1987, as amended at 67 FR 58695, Sept. 18, 2002; 68 FR 28131, May 23, 2003]