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DEPARTMENT OF STATE

[Public Notice: 6284]

Exchange Visitor Program--Termination of Flight Training Programs

ACTION: Statement of Policy.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA-44, 301 4th St., SW., Room 734, Washington, DC 20547. E-mail: jexchanges@state.gov; FAX: 202-203-5087.

SUMMARY: Since 1949 the Department of State (Department) has designated private sector and governmental entities to conduct training programs for eligible foreign nationals. For the past twenty years, such programs have included flight training activities. Currently, eight organizations facilitate the entry into the United States of approximately 350 foreign nationals annually for the purpose of flight training under the aegis of the Exchange Visitor Program and its J-visa. Regulations dealing specifically with flight training programs appear at 22 CFR 62.22(o).

These eight Department of State designated flight schools are also certified by the Department of Homeland Security (DHS) to issue the Form I-20, which is needed to obtain an M visa. Regulations governing the M visa appear at 8 CFR 214.2(m). DHS is also responsible for the security-related screening of all alien flight training candidates. Regulations governing flight training candidate screening appear at 49 CFR 1552. In January 2006, the Department issued a Statement of Policy on J-1 Flight Training Programs (71 FR 3913, January 24, 2006) providing notice that it would henceforth not designate any new J visa flight training program sponsors; nor would it allow currently-designated flight training programs to expand their programs, pending a determination as to which Federal agency ultimately would assume sole responsibility for administering and monitoring these programs.

In April 2006, the Department published proposed modifications to its regulations governing the Exchange Visitor Program's trainee category, including flight training. In response to this proposed rule and by letter dated May 30, 2006, the Office of Advocacy of the Small Business Administration opined, that if adopted, the Department's proposed modifications to 22 CFR 62.22(o), could have significant impact on a substantial number of small entities, in particular, flight training schools that sponsor alien flight candidates entering the United States on the J visa. Given this comment, the Department did not modify then existing flight training regulations when it adopted its

Interim Final rule (72 FR 33669, June 19, 2007).

In December 2007, the Department published a Final Rule (72 FR 72245, December 20, 2007) that permits the termination of designated programs that the Department determines no longer further its public diplomacy mission or compromises the national security of the United States (22 CFR 62.62). In adopting this provision, the Department explained that the Exchange Visitor Program is the cornerstone of the Department's public diplomacy efforts and integral to the furtherance of the President's Constitutional prerogatives in conducting foreign affairs (72 FR 62112). Pursuant to this regulatory authority, the Department hereby determines that all flight training programs no longer further the public diplomacy mission of the Department, and accordingly, effective June 1, 2010, the Department will terminate the Exchange Visitor Program sponsor designations of all eight sponsors of flight training programs.

The Department's decision to eliminate flight training from the Exchange Visitor Program is based on thorough consideration and deliberation. As explained in its January 2006 Statement of Policy, the Department does not have the expertise and resources to monitor fully flight training programs and ensure their compliance with the national security concerns that underlie the Patriot Act (Pub. L. 107-56). Further, the Aviation and Transportation Security Act of 2001 (49 U.S.C. 44939), assigns to the Attorney General discretion to request a wide variety of information from alien flight candidates in order to determine whether such flight candidates present a threat to aviation or national security. In light of this statutory directive, DHS issued an Interim Final Rule on September 20, 2004, assigning full responsibility for the screening of alien flight training candidates to DHS. Finally, all Department designated flight training sponsors are certified by the Department of Homeland Security to issue the Form I-20 and thereby permit foreign nationals to participate in flight training programs under the M visa. As all eight existing Department of State designated sponsors may continue, without interruption, the administration of flight training programs for foreign nationals, the Department believes that concerns raised by the Office of Advocacy of the Small Business Administration are outweighed by the security interests of the Government. The Department's position is sound given the expertise of DHS to administer and monitor such programs, efficiencies of government operation, and the security issues inherent in flight training.

The flight training sponsors will continue to have obligations to their exchange visitors pursuant to 22 CFR 62.63: they must fulfill their responsibilities to all exchange visitors who are in the United States at the time of their program termination until the individual's exchange program is completed. Also, sponsors must notify prospective exchange visitors who have not yet entered the United States that the program has been terminated. Such sponsors will have access to SEVIS to manage their existing program participants, but will not be able to initiate new programs after December 31, 2009.

Dated: June 30, 2008.
Stanley S. Colvin,
Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau
of Educational and Cultural Affairs, Department of State.

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