

10 Points to Remember When Applying for a Nonimmigrant Visa

1. **TIES TO YOUR HOME COUNTRY.** Under U.S. law, all applicants for nonimmigrant visas, such as student visas, are viewed as intending immigrants until they can convince the consular officer that they are not. You must therefore be able to show that you have reasons for returning to your home country that are stronger than those for remaining in the United States. "Ties" to your home country are the things that bind you to your home town, homeland, or current place of residence: job, family, financial prospects that you own or will inherit, investments, etc. If you are a prospective undergraduate, the interviewing officer may ask about your specific intentions or promise of future employment, family or other relationships, educational objectives, grades, long-range plans and career prospects in your home country. Each person's situation is different, of course, and there is no magic explanation or single document, certificate, or letter which can guarantee visa issuance. If you have applied for the U.S. Green Card Lottery, you may be asked if you are intending to immigrate. A simple answer would be that you applied for the lottery since it was available but not with a specific intent to immigrate. If you overstayed your authorized stay in the U.S. previously, be prepared to explain what happened clearly and concisely, with documentation if available.
2. **ENGLISH.** Anticipate that the interview will be conducted in English and not in your native language. One suggestion is to practice English conversation with a native speaker before the interview, but do NOT prepare speeches! If you are coming to the United States solely to study intensive English, be prepared to explain how English will be useful for you in your home country.
3. **SPEAK FOR YOURSELF.** Do not bring parents or family members with you to the interview. The consular officer wants to interview you, not your family. A negative impression is created if you are not prepared to speak on your own behalf. If you are a minor applying for a high school program and need your parents there in case there are questions, for example about funding, they should wait in the waiting room.
4. **KNOW THE PROGRAM AND HOW IT FITS YOUR CAREER PLANS.** If you are not able to articulate the reasons you will study in a particular program in the United States, you may not succeed in convincing the consular officer that you are indeed planning to study, rather than to immigrate. You should also be able to explain how studying in the U.S. relates to your future professional career when you return home.
5. **BE BRIEF.** Because of the volume of applications received, all consular officers are under considerable time pressure to conduct a quick and efficient interview. They must make a decision, for the most part, on the impressions they form during the first minute of the interview. Consequently, what you say first and the initial impression you create are critical to your success. Keep your answers to the officer's questions short and to the point.

6. **ADDITIONAL DOCUMENTATION.** It should be immediately clear to the consular officer what written documents you are presenting and what they signify. Lengthy written explanations cannot be quickly read or evaluated. Remember that you will have 2-3 minutes of interview time, if you're lucky.
7. **NOT ALL COUNTRIES ARE EQUAL.** Applicants from countries suffering economic problems or from countries where many students have remained in the US as immigrants will have more difficulty getting visas. Statistically, applicants from those countries are more likely to be intending immigrants. They are also more likely to be asked about job opportunities at home after their study in the U.S.
8. **EMPLOYMENT.** Your main purpose in coming to the United States should be to study, not for the chance to work before or after graduation. While many students do work off-campus after completion of their studies, such employment is incidental to their main purpose of completing their U.S. education. You must be able to clearly articulate your plan to return home at the end of your program. If your spouse is also applying for an accompanying F-2 visa, be aware that F-2 dependents cannot, under any circumstances, be employed in the U.S. If asked, be prepared to address what your spouse intends to do with his or her time while in the U.S. Volunteer work and attending school part-time are permitted activities.
9. **DEPENDENTS REMAINING AT HOME.** If your spouse and children are remaining behind in your country, be prepared to address how they will support themselves in your absence. This can be an especially tricky area if you are the primary source of income for your family. If the consular officer gains the impression that your family will need you to remit money from the United States in order to support themselves, your student visa application will almost certainly be denied. If your family does decide to join you at a later time, it is helpful to have them apply at the same post where you applied for your visa.
10. **MAINTAIN A POSITIVE ATTITUDE.** Do not engage the consular officer in an argument. If you are denied a student visa, ask the officer for a list of documents he or she would suggest you bring in order to overcome the refusal, and try to get the reason you were denied in writing.

WHAT DOES IT MEAN TO BE ADMITTED TO THE UNITED STATES?

by

Sarah K. Peterson Stensrud & Robert D. Aronson*

The United States immigration process consists of a series of interrelated, separate steps. To be in the United States legally, most foreign nationals focus on qualifying for non-immigration status or qualifying for permanent resident status. What is often overlooked is the application for admission to the United States, which is a legal procedure that occurs when a foreign national crosses the border to enter the United States. ²

In a digital age, requirements for admission to the United States continue to change. More importantly, expanding technological capabilities greatly enhance the U.S. Government's ability to monitor and track foreign nationals entering the United States. The stakes for successfully navigating the admissions process are high since a foreign national can be either delayed unduly at the port of entry or denied admission altogether, which then becomes part of a foreign national's permanent immigration record.

This piece explores the application for admission a foreign national makes when trying to enter the United States: what admission means, who is involved in the admissions process, the Custom and Border Patrol's (CBP) considerations when reviewing the application for admission, a foreign national's rights during this process, grounds of inadmissibility, what documents a foreign national must present to be admitted to the United States, and the registration steps a foreign national must undertake either before being admitted to the United States or upon departure from the United States. This piece does not address the admission that occurs when a foreign national adjusts to permanent resident status. At the end of this piece we present our thoughts on how to maximize the chances that admission to the United States will go smoothly and successfully.

WHAT IS ADMISSION TO THE UNITED STATES?

Every person entering the United States, except U.S. citizens, must make a formal application for admission. ³ Most frequently, the admission application is the inspections and entry process at the port of entry every time a foreign national – either an immigrant or non-immigrant – enters the United States.

When admitting a foreign national to the United States, a CBP officer makes determinations: 1) whether the foreign national's purpose for entering the United States matches the visa classification; and 2) if

* Sarah K. Peterson Stensrud is an Associate Attorney with Aronson & Associates, P.A., dealing largely in employment-based immigration. She holds her J.D. *Cum Laude* from the University of Minnesota Law School and is finishing a Master in Public Policy from the Hubert H. Humphrey Institute of Public Affairs. Robert D. Aronson is the Principal Attorney at Aronson & Associates, P.A., practicing in the area of employment-based immigration with a focus on International Physicians, biomedical researchers, and healthcare workers. Mr. Aronson is a graduate of the Indiana University School of Law, *Cum Laude*, and was a Fulbright Fellow at the law schools of Harvard University and Moscow State University.

The information in this article is of a general nature and is provided as a courtesy. It should not be relied on as legal advice for specific cases. Receiving or reading this article does not create an attorney-client relationship between the reader(s) and Aronson & Associates, P.A. or between the authors and foreign national. As the information herein presented should make amply clear, sound immigration advice can only be provided after careful review of a potential client's facts and the creation of a formal attorney-client relationship.

Copyright © by the authors. All rights reserved.

² A foreign national is also formally admitted to the United States when the USCIS approves an application for permanent resident status for the foreign national. Matter of Rosas, 22 I&N Dec. 616 (BIA 1999).

³ INA § 235(a)(3); 8 C.F.R. § 235.

there are any problems related to the foreign national's character or background that disqualifies him from entering the United States.

Since 1996, our immigration laws have distinguished between *entry* into the United States and *admission* to the United States. ⁴ Admission to the United States is more than mere entry into the United States (i.e., physical presence in this country); rather, admission gives a foreign national, after inspection by the U.S. CBP Officer, the legal right to enter the United States and remain eligible for future immigration benefits. ⁵

What U.S. Government Agencies are involved in the Admissions Process?

There are two federal agencies involved in the admissions process: The U.S. Department of State (DOS) and the U.S. Customs and Border Protection (CBP). The DOS is the government agency responsible for issuing visas ⁶ through U.S. Consulates abroad. The CBP, an agency of the U.S. Department of Homeland Security (DHS), is the agency responsible for determining whether the purpose of the foreign national's specific trip corresponds to the general authorization embedded in the visa. The CBP determines whether the foreign national fulfills all legal requirements to be admitted to the United States.

⁷

When Does the Application for Admission Begin?

The admissions process starts when a CBP Officer inspects a foreign national at a U.S. port of entry. The purpose of this inspection is twofold: 1) to determine if the foreign national's trip corresponds with his visa; and 2) to determine if there are any grounds that make the foreign national inadmissible – i.e., not allowed entry to the United States. If a nonimmigrant passes inspection, the CBP Officer admits him to the United States and denotes the appropriate duration of stay on the I-94 card. ⁸ A foreign national who is admitted to the United States remains eligible for future immigration benefits. Conversely, a foreign national who enters the United States without inspection by a CBP Officer has not been properly admitted and is thereby subject to detention, removal, and possible bars from entering the United States in the future.

What are CBP's Options in Deciding Whether to Admit a Foreign National?

A CBP Officer has the following options when adjudicating a foreign national's application for admission:

DETERMINE THAT ALL REQUIREMENTS FOR ADMISSION HAVE BEEN SATISFIED AND ADMIT THE FOREIGN APPLICANT TO THE UNITED STATES;

Refer the case to Secondary Inspection for further review; ⁹

⁴ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208 (IIRIRA) (Sept. 30, 1996).

⁵ INA §235; 8 C.F.R. § 235.

⁶ A visa is a travel document that authorizes a foreign national to travel to the United States to present herself for lawful admission.

⁷ Two other immigration agencies fall under DHS's umbrella: The U.S. Immigration and Customs Enforcement (ICE), responsible for enforcing U.S. Immigration Laws, and U.S. Citizenship and Immigration Services (USCIS), responsible for granting immigration benefits.

⁸ Certain Canadian and Mexican Citizens who are visiting the U.S. are exempt from receiving an I-94 Card. *See*, 8 C.F.R. 235.1(f). Moreover, even though permanent residents must be admitted they do not receive I-94 cards.

⁹ Secondary Inspection is a more extensive determination of admissibility normally conducted in a private room at the port of entry.

Defer a final decision on admission by paroling the foreign national into the United States and instructing the foreign national to appear at a Deferred Inspection hearing. (While the foreign national is physically in the United States in this parole status, he has not yet been legally admitted);
Deny admission to a foreign national. Airline carriers are liable for the return cost of transportation in this situation which is why airlines are quite thorough in inspecting travel documents at the port of origination;
10 or,
Place the foreign applicant in removal proceedings. 11

What Rights and Responsibilities Does a Foreign National Have During the Admissions Process?

At the time of admission, the foreign national bears the burden of convincing the CBP Officer that he “clearly and beyond a doubt” qualifies for admission into the United States. 12 Moreover, a foreign national does not have the right to an attorney during the admissions process. If the foreign national encounters problems during the admissions process, his only recourse is to request to speak with a supervisor whose primary purpose is to assist travelers. 13

If a foreign national is placed in a removal hearing, he has “the privilege of being represented” by an attorney *at his own expense*. 14 So although a foreign national may have an attorney present in a removal hearing, the U.S. government will not pay for these legal services. In certain instances, if a foreign national has a valid visa but was denied admission, a foreign national can request a hearing before the immigration Court. However, determinations made for visa waiver applications are final, as are determinations made on cases involving fraud, willful misrepresentation, and the lack of a valid immigrant visa for an intending immigrant.

Concept of “Grounds of Inadmissibility.”

Perhaps the most confusing yet important determination made during the admissions process is whether the foreign national is “admissible” to the United States. Even if the intended purpose of his trip corresponds with the terms of his visa, the foreign national may still be denied admission if there is some abnormality that disqualifies him from entering the United States. Although the list of grounds for inadmissibility may vary depending on the type of visa status sought, the following is a list of the most common grounds:

HEALTH-RELATED GROUNDS: THIS GENERALLY RELATES TO CONTAGIOUS DISEASES SUCH AS TUBERCULOSIS, AIDS/HIV, ETC. 15

¹⁰ INA § 235(b)(1)(A)(i).

¹¹ Procedurally, the DHS must officially “charge” the foreign national by issuing a “Notice to Appear.” The foreign national then appears before an Immigration Judge and can appeal the decision to the Board of Immigration Appeals. For more information, *see Immigration Court Process in the United States*, U.S. Department of Justice, Executive Office for Immigration Review, News Release, April 28, 1005, at <http://www.usdoj.gov/eoir/press/05/ImmigrationCourtProcess2005.htm>, last visited September 27, 2006.

¹² 8 C.F.R. § 1240.8(b). The United States Supreme Court held that a foreign national who “seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government only upon such terms as [it] shall prescribe.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 70 S. Ct. 309 (1950).

¹³ http://www.cbp.gov/xp/cgov/travel/customerservice/pledge_travel.xml, last visited September 27, 2006.

¹⁴ INA § 292.

¹⁵ INA § 212(a)(1).

PREVIOUS CRIMINAL ACTIVITY: THIS GENERALLY RELATES TO THE COMMISSION OF VARIOUS CRIMES, INSTANCES OF MULTIPLE CONVICTIONS, DRUG TRAFFICKERS, PROSTITUTION, TRAFFICKING, ETC. 16

Security-related grounds: this refers to terrorist activities, a definition that has grown considerably since 9/11; 17

Public Charge: this relates to instances in which a foreign national appears unable to financially support himself in the United States; 18

Work-Related Abnormalities: this refers to employment-based cases which lack an approved labor certification application or lack the proper credentialing for various healthcare workers; 19

Immigration Violators: this refers to instances in which a foreign national may have previously violated his immigration status. Most commonly this involves foreign nationals with substantial periods of unlawful presence or foreign nationals trying to reenter the United States prematurely following a final removal order; 20

Documentation Irregularities: this occurs when a foreign national fails to hold a valid passport or any other immigration-related document; 21 or,

Unlawful Voting. Because only United States Citizens are legally authorized to vote, lawful permanent residents who vote in U.S. elections are inadmissible. 22

It is important to know that despite these grounds of inadmissibility, waivers are available in certain instances. 23

Non-Immigrant Admissions.

U.S. immigration laws *presume* that all non-immigrants have immigrant intent, or the intent to remain permanently in the United States. 24 Yet most non-immigrant categories require that the foreign national intend to stay temporarily in the United States and that following this temporary stay, will depart the United States. 25 As such, the burden is on the foreign national to convince both the Consular Officer (at the time of application for a visa) and the CBP Officer (at the time of application for admission at a port of entry) that he does not intend to stay in the United States permanently. If the foreign national fails to convince the Consular Officer and / or the CBP Officer that he intends to remain in the United States on a temporary basis, it is grounds to deny the visa and / or deny admission to the United States.

WHAT DOCUMENTS MUST A FOREIGN NATIONAL PRESENT FOR ADMISSION TO THE UNITED STATES?

¹⁶ INA § 212(a)(2).

¹⁷ INA § 212(a)(3).

¹⁸ INA § 212(a)(4).

¹⁹ INA § 212(a)(5).

²⁰ INA § 212(a)(6).

²¹ INA § 212(a)(7).

²² INA § 212(a)(10).

²³ INA § 212(d).

²⁴ INA § 214(b).

²⁵ Certain non-immigrant categories, such as H and L, allow dual intent. This means that foreign nationals seeking admission in H or L nonimmigrant status need not convince the Consular Officer and / or CBP officer that they have non-immigrant intent, or the intent to remain in the United States for a finite and temporary period. INA § 214(b).

A foreign national must present several documents when applying for admission to the United States. Most frequently, these documents include a valid passport, a visa, and an I-94 Card.

PASSPORT

A foreign national must have a valid passport. 26 Foreign nationals entering in non-immigrant status must have a passport valid for six months beyond the period of intended admission. 27 Foreign nationals with immigrant visas must have a passport valid for 60 days beyond the expiration of the immigrant visa, although there are some exceptions to this general rule. 28 If a passport is not valid for the required period, a CBP Officer has the authority to either grant entry but shorten the length of stay or deny entry altogether. In certain circumstances, if a foreign national lacks the proper passport validity period upon entry, he may make an application for waiver of Passport and / or Visa requirement by completing a form and paying a fee. 29

Periodically the U.S. Department of State publishes a table of Foreign Passports Recognized for Extended Validity. 30 If the passport is valid at the time of presentation, the United States considers the passports of nationals from these listed countries automatically valid for six months *beyond* the actual expiration date. 31

In the past, citizens of the United States, the Caribbean, Bermuda, Panama, Mexico and Canada traveling between these countries were not required to present a passport to be admitted to the United States. However, the United States Department of State recently implemented the Western Hemisphere Travel Initiative (WHTI) which changes long-standing travel requirements for travelers seeking admission to the United States from the Americas, the Caribbean, and Bermuda. Starting January 8, 2007, citizen travelers from the Caribbean, Bermuda, Panama, Mexico and Canada seeking entry into the United States via air or sea must produce a passport to be admitted to the United States. 32 Even U.S. citizens must present valid passports when returning from trips abroad. 33 On January 1, 2008, this passport requirement extends to all entries via land. 34

VISA

A visa is a stamp issued by a United States Consular Office abroad and placed in a foreign national's passport. A visa signifies that a foreign national is eligible to apply for admission to enter the United States for a specific purpose and specific period. A visa does not automatically guarantee that a foreign national will be admitted to the United States. Rather, the dates listed on the visa is the period during which the foreign national may use the visa to make an application for admission to the United States. 35

²⁶ Certain Canadian Citizens are exempt from this requirement. *See*, 8 C.F.R. § 212.1(a)(1).

²⁷ INA § 212(a)(7)(B)(i).

²⁸ INA § 212(a)(7)(A); 8 C.F.R. § 211.2(a).

²⁹ Form I-193 with a \$265 filing fee. *See*, 8 C.F.R. § 211.2(b).

³⁰ *See*, Foreign Affairs Manual (FAM) 41.104 Exhibit 1, for a current list of countries.

³¹ *Id.*

³² *See*, http://travel.state.gov/travel/cbpmc/cbpmc_2223.html, last visited September 27, 2006. Although the U.S. CBP may accept other secure, accepted documentation that establishes the bearers' nationality and identity, the details regarding acceptable documentation remain undefined.

³³ The only exception is for trips made to the U.S. Virgin Islands and Puerto Rico.

³⁴ *See*, http://travel.state.gov/travel/cbpmc/cbpmc_2223.html, last visited September 27, 2006.

³⁵ 22 C.F.R. § 41.112(a).

To obtain a visa, a foreign national must make an appointment at a U.S. Consulate abroad. Each Consulate follows unique visa issuance procedures. Generally these procedures require a foreign national to appear for an interview, give fingerprints, take a digital photo, and pay a fee. A foreign national should check the U.S. Department of State website to obtain details on a specific Consulate's procedures. 36

Visa Exemptions

Nationals of certain participating countries qualify for the Visa Waiver Program (VWP). 37 Nationals of VWP countries 38 are not required to obtain a visa to apply for admission to the United States, or other participating countries, if they intend to enter the participating country for less than 90 days for business or pleasure and have a round-trip airline ticket. 39 However, Congress passed the USA-PATRIOT Act that requires all VWP travelers have a machine-readable passport. 40 If a passport does not conform to United States machine-readable requirements, nationals of participating VWP countries may be required to obtain a visa. To ensure that a VWP traveler remains visa exempt, he should always confirm with the passport-issuing authority in his country to confirm that he possesses a machine-readable passport.

A foreign national who has an expired visa stamp in a valid passport may be able to travel to a "contiguous territory" for 30 days or less and return to the United States without first obtaining a new visa prior to re-entry. To re-enter the United States, the foreign national must present a valid passport, I-94 card, and expired visa. 41 Nationals of Iran, Syria, Libya, Sudan, North Korea, or Cuba are ineligible for this benefit and must obtain a valid visa before applying for admission to the United States. This benefit becomes void if, while outside of the United States, the foreign national applied for a visa but was denied. 42

I-94 CARD

Airlines and CBP Officers at ports of entry provide all foreign nations, except U.S. Permanent Residents, the appropriate form to complete for admission to the United States. This form is the I-94, Nonimmigrant Visa Waiver Arrival / Departure Form (I-94W for VWP travelers). The I-94 requests general data and an address at which the foreign national will stay while in the United States. It is the foreign national's obligation to notify the U.S. Citizenship and Immigration Service (USCIS) within 10 days of any change in address by submitting form AR-11 to the USCIS.

³⁶ See, <http://usembassy.state.gov/>, last visited September 27, 2006.

³⁷ INA §217(a); 8 C.F.R. §217.2.

³⁸ At time of publication, the following 27 countries are part of the visa waiver program with the United States: Andorra, Iceland, Norway, Australia, Ireland, Portugal, Austria, Italy, San Marino, Belgium, Japan, Singapore, Brunei, Liechtenstein, Slovenia, Denmark, Luxembourg, Spain, Finland, Monaco, Sweden, France, the Netherlands, Switzerland, Germany, New Zealand, and the United Kingdom. See, http://www.travel.state.gov/visa/temp/without/without_1990.html#2, last visited September 27, 2006.

³⁹ INA §217(a); 8 C.F.R. §217.2.

⁴⁰ A machine-readable passport contains two lines of data on the biographical page, similar to a bar code. For an example of a machine-readable passport, see, http://www.travel.state.gov/visa/temp/without/without_1990.html#4, last visited September 27, 2006.

⁴¹ 22 C.F.R. § 41.112(d).

⁴² U.S. Consulates abroad notate a visa denial on the back page of a passport, using indelible ink. See, March 14, 2002 cable by Secretary of State Colin Powell, AILA infonet Doc. No. 02040432.

For air and sea entry, the I-94 card is for single entry. 43 For land entrants, the I-94 card is valid for multiple entries. 44 The I-94 card is significant in that it is the foreign nationals proof of legal eligibility to remain in the United States. A foreign national should retain a copy of all I-94 cards issued to him.

How Do I Know if I have Been Lawfully Admitted?

For non-immigrants, if the CBP Officer is convinced, after inspection, of the legitimate nature of the application for admission, the CBP Officer will notate the appropriate immigration status on the I-94 card, along with the duration of stay granted to the foreign national. The CBP Officer will staple the I-94 card in the foreign nationals passport. It is important that the immigration status and period of stay noted on the I-94 match the data on the corresponding visa because the I-94 card becomes the foreign nationals proof of legal eligibility to remain in the United States (i.e., it shows that a foreign national was properly admitted to the United States).

Every lawful permanent resident (LPR) must be admitted into the United States. If the CBP Officer is convinced, after inspection, that a LPR is admissible, he will be admitted into the United States. If the CBP Officer deems a LPR is inadmissible, the CBP Officer will defer a LPR to secondary inspection or parole the LPR into the United States for a deferred inspection hearing.

Registration Requirements For Admission to and Exit from the United States.

US-VISIT

On January 5, 2004, the United States Department of Homeland Security implemented US-VISIT. 45 This is a data-collection program aimed at eliminating immigration fraud. US-VISIT currently applies to all non-immigrant foreign visitors between the age of 14 and 79, although there are a few exemptions. 46 US-VISIT currently exists at 115 airports, 15 seaports, and in secondary inspection areas of 154 land ports.

US-VISIT begins when a foreign national applies for a visa at a United States Consular Office abroad. Before receiving a visa, a foreign national provides biometric information, including two digital finger scans and a digital photograph. This information is embedded in the visa so that when the foreign national applies for admission at a United States port of entry, new biometric information is collected and matched with the biometric information embedded in the visa. This allows the CBP Officer at the port of entry to confirm the person applying for admission is the same person who applied for the visa.

US-VISIT recently implemented a pilot program for taking biometrics information at ports of exit. Currently, twelve airports have US-VISIT exit kiosks. 47 These US-VISIT exit kiosks scan a foreign nationals passport, take a finger scan of the left and right index fingers, take a digital photograph, and issue a receipt confirmation for a foreign national to present to the airline before boarding. Ultimately the Department of Homeland Security will implement this US-VISIT exit procedure at all airports.

⁴³ 8 C.F.R. §235.1(f)(1)

⁴⁴ *Id.*

⁴⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, §110 (IIRAIRA); INS Data Management Improvement Act, P.L. 106-215 (DMIA).

⁴⁶ For a list of exemptions, *see*, http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0527.xml, last visited September 27, 2006.

⁴⁷ At time of publication, these airports include: Baltimore/Washington International; Chicago O'Hare International; Dallas/Fort Worth International; Denver International; Detroit Metropolitan Wayne County International; Fort Lauderdale-Hollywood International; Hartsfield-Jackson Atlanta International; Luis Muñoz Marin International in San Juan, Puerto Rico; Newark Liberty International; Philadelphia International; San Francisco International; Seattle-Tacoma International.

If a foreign national is flying out of the United States from one of the US-VISIT exit airports, he should register at the US-VISIT kiosk. Although the DHS has stated that the US-VISIT exit program is voluntary, on a practical level, failure to register prevents DHS from confirming whether and when a foreign national left the United States. DHS might then assume that a foreign national never left or overstayed the terms of her immigrant status. Thus, if a foreign national is departing the United States from one of the pilot airports with US-VISIT exit kiosks, he should find the US-VISIT Kiosk and register. If a foreign national is unable to register, he should retain as much supporting documentation as possible to present at re-entry to document when and where he left the United States. Failure to register may result in a violation of the terms of admission or ineligibility to obtain a visa in the future. 48

Currently the following categories of foreign national visitors are exempt from US-VISIT 49:

Visitors admitted on an A-1, A-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visa;

Children under the age of 14 & Persons over the age of 79;

Classes of visitors the Secretary of State and the Secretary of Homeland Security jointly determine shall be exempt;

A foreign national visitor the Secretary of State and the Secretary of Homeland Security or the Director of Central Intelligence Agency jointly determine shall be exempt;

Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas;

United States Citizens;

United States Legal Permanent Residents;

There are special requirements for Canadian 50 and Mexican 51 citizens.

On July 27, 2006, the United States Department of Homeland Security released proposed regulations that, if enacted, will expand the US-VISIT requirement to almost all foreign visitors, including U.S. Legal Permanent Residents. 52 As of the date of this article's publication, these proposed regulations have not yet been enacted into law.

NATIONAL SECURITY ENTRY / EXIT SYSTEM (NSEERS)

The National Security Entry / Exit Systems, or NSEERS, is a data collection program required of certain foreign nationals. 53 Although DHS can impose NSEERS on anyone, DHS currently only requires certain nationals of Iran, Iraq, Libya, Sudan, and Syria to register upon their first entry into the United States. 54 A foreign national who registers with NSEERS receives a Fingerprint Identification Number, or FIN, notation on his I-94 Card and a notation of Special Registrant (SR). If a foreign national complies with NSEERS upon entry to the United States, he must also do it upon exit of the United States. Finally, if a foreign national complies with NSEERS, it is not necessary to also do US-VISIT. However, compliance with US-VISIT does not fulfill NSEERS requirements.

⁴⁸ 8 C.F.R. §215.8(b).

⁴⁹ 8 C.F.R. 235.1(d)(1)(iv).

⁵⁰ http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0695.xml, last visited September 27, 2006.

⁵¹ http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0696.xml, last visited September 27, 2006.

⁵² See, <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/E6-11993.htm>, last visited September 27, 2006.

⁵³ 8 C.F.R. § 264.1(f)(1).

⁵⁴ <http://www.ice.gov/pi/specialregistration/index.htm>, last visited September 27, 2006.

Helpful Tips for the Admission Process

Each year, thousands of foreign applicants are turned away at the border of the United States and countless more are delayed unduly during the admissions process. The following are tips to make the admissions process go smoothly and quickly:

UNDERSTAND THE IMMIGRATION STATUS YOU ARE REQUESTING. EACH NON-IMMIGRANT VISA AUTHORIZES SPECIFIC ACTIVITIES IN THE UNITED STATES, SUCH AS SPECIFIC WORK AUTHORIZATION, STUDENT STATUS, CASUAL VISITS, ETC. UNDERSTAND THE TYPE OF VISA YOU POSSESS AND MAKE SURE THAT YOU CAN PROVE THAT YOUR SPECIFIC REASON FOR COMING TO THE UNITED STATES MATCHES THE VISA OR AUTHORIZATION PRESENTED TO THE CBP OFFICER.

Understand That it is Your Responsibility to Persuade the CBP Officer. The burden is on the foreign applicant to establish eligibility for admission. The CBP Officer need not prove why you are inadmissible.

Check Your Documents. You need certain documents to present yourself for admission to this country – i.e., a valid passport, a valid visa (unless visa exempt), and possibly an approved petition. Make sure that your documents are in order.

Check your I-94 Card. Once satisfied with your application, the CBP Officer will issue a completed I-94 card to you (unless you are a lawful permanent resident). The I-94 card establishes the basic terms and conditions of your lawful non-immigrant status in the United States. Mistakes happen, so check over the spelling of your name, the dates of your authorized stay, your visa status, etc. It is far easier to correct mistakes at the port of entry rather than trying to fix at a later date.

Be Professional and Courteous. Most CBP Officers are not interested in setting traps for the unwary. It is worthwhile to be polite in your communications with the CBP Officers since the initial admission decision is discretionary. If your papers are in order, have confidence in your legitimate reason for admission to the United States.

If problems develop, ask to speak with a Supervisor. If things get off-track for whatever reason, ask to see the supervisor. The supervisor's main responsibility is to help travelers clear the CBP inspection. Oftentimes Supervisors know the law to a greater degree than the initial CBP Officer.

Conclusion

Lawful admission to the United States is an important, and somewhat complex step in every foreign national's travel to the United States. Because a foreign national does not have legal counsel present at the time of admission, it is always prudent to check with immigration counsel well in advance of leaving the United States to ensure full compliance with admissions requirements upon entry.

ARRIVAL PROCEDURES FOR STUDENTS OR EXCHANGE VISITORS

DEFINITIONS

F-1 Academic Students enter the United States to pursue a full course of study at one of the following types of DHS-approved academic institutions in the United States:

- Established college or university
- Seminary
- Conservatory
- Academic high school (or, for F-3 students, elementary school)
- Language Training Program

Attendance at a public elementary school, a publicly funded adult education program is prohibited. Study at a public secondary school is time-limited and requires reimbursement to the local educational agency.

M-1 Vocational Students enter the United States to pursue a full course of study at one of the following types of DHS-approved nonacademic institutions (other than language training programs) in the United States:

- Community college or junior college which provides vocational or technical training and which awards recognized associate degrees;
- Vocational or other nonacademic high school;
- Post-secondary vocational or business school;
- School that provides vocational or nonacademic training other than language training;
- School that offers both vocational and academic courses, as long as the student's primary intent is to study vocational courses.

Language training qualifies only when taken at the same school for the purpose of enabling the student to understand the vocational or technical course of study.

J-1 Exchange Visitors are foreign nationals who have been selected by a Department of State (DOS) designated program sponsor to participate in an exchange visitor program in the United States. This program is designed to promote mutual understanding between the United States and other countries through the interchange of persons, knowledge, and skills.

ADVANCE PREPERATION PRIOR TO ENTRY

Careful planning and preparation by students and exchange visitors can ensure that the delay based established procedure is minimal. If you are a non-immigrant student or exchange visitor, here are some things you should do:

- ✓ Before leaving your country, confirm that your passport and nonimmigrant visa are still valid for entry into the United States. The passport should be valid for at least six months beyond the date of your expected stay.
- ✓ Check to see that your visa accurately reflects your correct visa classification.
- ✓ If the visa states the name of the institution you will attend or identifies the exchange program in which you are participating, verify that this information is accurate as well. If your review indicates any discrepancies or potential problems, visit the U.S. Embassy or Consulate to obtain a new visa.
- ✓ Students and exchange visitors entering the United States for the first time under their respective nonimmigrant visa classification may only be admitted up to 30-days prior to the program start date.
- ✓ When you receive your U.S. nonimmigrant visa at the Embassy or Consulate in your country, the consular officer will seal your immigration documents in an envelope and attach it to your passport. You should not open this envelope! The Customs and Border Protection Officer at the U.S. port-of-entry will open the envelope.
- ✓ When you travel, you should carry some specific documents on your person. Do not check them in your baggage! If your baggage is lost or delayed, you will not be able to show the documents to the Customs and Border Protection Officer and, as a result, may not be able to enter the United States.

Documents **you should carry** on your person:

- Passport (including attached envelope of immigration documents) with nonimmigrant visa;
- SEVIS Form I-20AB, I-20MN, or DS-2019;
- Visa exempt nationals presenting a SEVIS Form I-20AB, I-20MN or DS-2019 issued on or after September 1, 2004, who are entering the United States for the first time should have a Form I-797, Receipt Notice or Internet Receipt verifying SEVIS Fee payment. For additional SEVP/SEVIS Program Information, refer to the U.S. Immigration and Customs Enforcement website at <http://www.ice.gov/graphics/sevis/students/index.htm>
- Evidence of financial resources, In addition, it is **recommended that you also carry** the following documents:
 - Evidence of Student/Exchange Visitor status (recent tuition receipts, transcripts);
 - Name and contact information for Designated School Official (DSO) or Responsible Officer (RO) at your intended school or program;
 - Writing instrument (pen).

If you are traveling by aircraft, the flight attendants on board will distribute CF-6059 Customs Declaration Forms and Form I-94, Arrival-Departure Record for immigration,

before you land at your initial point-of-entry in the U.S. Complete these forms while you are on the aircraft and submit them to the appropriate Customs and Border Protection Officer upon your arrival. **If you do not understand a form, ask the flight attendant for assistance.**

Upon arrival at the port-of- entry, proceed to the terminal area for arriving passengers for inspection. As you approach the inspection station, **ensure that you have:** passport, SEVIS Form I-20 or DS-2019; completed Form I-94 Arrival-Departure Record; and, CF-6059 Customs Declaration Form available for presentation to the CBP Officer. The Form I-94 should reflect the address where you will reside (not the address of the school or program sponsor).

If you are entering through a land or designated seaport, the Customs and Border Protection Officer will provide the necessary CF-6059, Customs Declaration Form and Form I-94, Arrival-Departure Record at the port-of-entry. If you do not understand a form, ask the CBP Officer for assistance.

Like all entering visitors, you will be asked to state the reason you wish to enter the United States. You will also be asked to provide information about your final destination. It is important that you tell the CBP Officer that you will be a student or exchange visitor. Be prepared to include the name and address of the school or exchange visitor program where you will enroll/participate.

If you are authorized optional practical training, this should be reflected on page 3 of your SEVIS Form.

Once your inspection is complete, the inspecting officer will:

- Stamp your SEVIS Form for duration of status (“D/S”) for F and J visa holders;
- Stamp your SEVIS Form for 30-days beyond program end date for M visa holders, not to exceed one-year;
- Stamp the Form I-94 and staple it in the passport;
- Return the SEVIS Form.

SECONDARY INSPECTION REQUIREMENTS

If the inspector cannot automatically verify your information or you do not have all of the required documentation, you may be escorted to an interview area know as “secondary inspection.” Secondary inspection allows inspectors to conduct additional research in order to verify information. Verifications are done apart from the primary inspection lines so that an individual case will not cause delays for other arriving passengers.

It is recommended that you have readily available the name and phone number of the foreign student advisor at your school or the person responsible for your J-1 Exchange Visitor Program in case your admission/participation needs to be verified. In the event you arrive during non-business hours (evenings, weekends, holidays), you should have a phone number where this individual can be reached during non-business hours.

Failure to provide proper documentation and to comply with entry/exit procedures is cause to refuse the student or exchange visitor admission into the United States. In limited circumstances, if a student or exchange visitor is mostly, but not fully in compliance, he/she may be issued a Form I-515A, Notice to Student or Exchange Visitor. This form authorizes temporary admission for 30 days into the United States and requires the student or exchange visitor to take immediate action to submit proper documentation. Noncompliance with the directions contained on these forms can result in future adverse action.

CONTINUING STUDENTS

Continuing students who are going to travel outside of the United States must see their foreign student advisor and obtain an endorsement from the DSO or RO. The endorsement will be made on page 3 of the SEVIS Form I-20 or page 1 of the DS-2019. When returning to the United States, a continuing student/exchange visitor must present a valid SEVIS Form I-20 or DS-2019 with the DSO or RO signature showing that the student is active and in good standing with the school or program.

FACT SHEET

ARRIVING AT A U.S. PORT OF ENTRY ... WHAT A STUDENT CAN EXPECT

U.S. Immigration and Customs Enforcement's **Student and Exchange Visitor Program (SEVP)** is committed to facilitating your stay in the United States while you take advantage of our nation's academic, educational, and cultural offerings. To enhance security without slowing legitimate travel, the Department of Homeland Security (DHS) has instituted some changes in U.S. entry and exit procedures. Careful planning and preparation by international students can ensure that any delay based on these procedures is minimal.

PLAN YOUR ARRIVAL

You may be refused entry into the United States if you attempt to arrive more than 30 days before the program start date listed on your SEVIS I-20 form.

ALWAYS HAND-CARRY YOUR DOCUMENTS

Do not check the following documents in your baggage. If your baggage is lost or delayed, you will be unable to present the documents at your port of entry. As a result, you may not be able to enter the United States

1. **Your passport, valid for at least six months beyond the date of your expected stay;**
2. **SEVIS Form I-20.**

In addition, it is strongly recommended that you also hand carry the following documentation:

1. Evidence of financial resources;
2. Evidence of student status, such as recent tuition receipts and transcripts;
3. Paper receipt for the SEVIS fee, Form I-797, and
4. Name and contact information for your "Designated School Official", including a 24-hour emergency contact number at the school.

For comprehensive information on procedures for traveling and arriving in the United States, visit: <http://educationusa.state.gov/predeparture/travel/customs.htm>

COMPLETE YOUR ENTRY PAPERWORK

If Arriving By Air: Flight attendants will distribute Customs Declaration Forms (CF-6059) and Arrival Departure Record Forms (I-94). These must be completed prior to landing.

If Arriving By Land or Sea: The CBP Officer at the port of entry will provide the necessary Customs Declaration Forms (CF-6059) and Arrival-Departure Record Forms (I-94) to be filled out upon your arrival.

AS YOU ARRIVE AT THE PORT OF ENTRY

Proceed to the terminal area for arriving passengers. Have the following documents available for presentation: your passport; SEVIS Form (I-20); Arrival-Departure Record Form (I-94); and Customs Declaration Form (CF-6059). The Form I-94 should reflect the address where you will reside, not the address of the school or program.

All visitors entering the United States must state their reason for wishing to enter the country. You will also be asked to provide information about your final destination. **It is important that you tell the CBP Officer that you will be a student.** Be prepared to include the name and address of the school program where you will enroll/participate.

Once your inspection is successfully completed, the inspecting officer will:

- **Stamp your SEVIS Form for duration of status (“D/S”) for F visa holders**
- **Stamp your SEVIS Form for 30 days beyond program end date for M visa holders**
- **Stamp the Arrival-Departure Record Form (I-94) and staple it in the passport**

FOLLOWING ADMISSION INTO THE UNITED STATES

Students should report to their school within 30 days of the date that appears on the SEVIS I-20 form to register for courses or to validate their intended participation. Failure to do so may result in serious consequences.

ADDITIONAL INFORMATION

SECONDARY INSPECTION REQUIREMENTS

If the CBP officer at the port of entry cannot initially verify your information or you do not have all of the required documentation, you may be directed to an interview area known as “secondary inspection.” Secondary inspection allows inspectors to conduct

additional research in order to verify information without causing delays for other arriving passengers.

The inspector will first attempt to verify your status by using the Student and Exchange and Visitor Information System (SEVIS). In the event that the CBP Officer needs to verify information with your school or program, **we strongly recommend** that you have the **name and telephone number of the foreign student advisor at your school**. In the event you arrive during non-business hours (evening, weekends, holidays), you should also have an emergency or non-business hour phone number available for this official.

Failure to comply with U.S. government entry-exit procedures may result in your being denied entry to the United States. Under certain circumstances, the CBP officer may issue a "Notice to Student or Exchange Visitor" Form (I-515A), which authorizes temporary admission into the United States. Work with your school to submit the proper documentation without delay.

US-VISIT

All nonimmigrant visitors holding visas -- regardless of race, national origin, or religion - participate in the US-VISIT program, a comprehensive registration system tracking entries to and exits from the United States. For more information:

www.dhs.gov/xnews/releases/press_release_0305.shtm

NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM (NSEERS)

Some individuals may be asked to provide additional information under the National Security Entry-Exit Registration System (NSEERS). A packet of information will be available at the port of entry explaining the registration procedure. For more information:

www.dhs.gov/xnews/releases/press_release_0305.shtm

ICE

U.S. Immigration and Customs Enforcement is the largest investigative arm of the Department of Homeland Security.

Last Modified: Monday, November 19, 2007



The Johns Hopkins Medical Institutions
Office of International Services

Reed Hall, 1st Floor 1620 McElderry Street
Baltimore, Maryland 21205
Phone: 410.955.3371 Fax: 410.955.0871
www.hopkinsmedicine.org/intlsvcs

SEVIS FEE FOR INCOMING INTERNATIONALS ON F & J VISAS

As of September 1, 2004, all applicants for F and J visas coming to participate in a Johns Hopkins University: Medical Institutions sponsored program will be required to pay a \$100 fee to the U.S. Department of Homeland Security (in addition to any other visa application fees charged by the U.S. consulate/embassy). This fee must be paid directly to the Department of Homeland Security using a Form I-901 before any visa stamp application will be accepted at a U.S. consulate or embassy.

In order to pay the fee prior to visa stamp application, applicants have the following options:

- (1) Pay via the internet using a credit card. The U.S. Department of Homeland Security has set up a website on the internet to accept electronic payments. Go to <http://www.fmiffee.com> and follow the instructions.
- (2) Submit a Form I-901 with fee payment directly to the U.S. Department of Homeland Security via postal service and wait for the U.S. Department of Homeland Security to update SEVIS and mail a receipt to you in your home country. The Form I-901 became available at <http://www.ice.gov/graphics/sevis/> on September 1, 2004. Mailing instructions will be given on the form.
- (3) Pay using local currency through Western Union Quick Pay™. See http://www.ice.gov/graphics/sevis/i901/wu_instr.htm for detailed instructions. You will need to submit the I-901 data at the time of payment but the properly completed Western Union receipt serves as immediate proof-of-payment for a visa interview at a U.S. consulate and for admission at a U.S. port of entry. This option is available in any country where Western Union offers its Quick Pay™ service.

In some instances, a third party (such as a family member or sponsor with a credit card) may cover your fee on your behalf. However, regardless, you must be able to show a receipt to the U.S. consulate or embassy in order to make an application for an F or J visa stamp.

We have included additional information on common questions concerning the SEVIS fee with this memo. Please read it and all the enclosed information carefully.

SEVIS Fee Q & A
for F-1 and J-1 Applicants
for Johns Hopkins University: Medical Institution Programs

What is the SEVIS fee?

This SEVIS fee is required of all foreign nationals who come to the United States for the purpose of pursuing a full course of study or research training in institutions such as colleges, universities, and language training programs. It is payable one time for each single educational program in which an F-1 or J-1 participates, extending from the time the applicant is granted F-1 or J-1 status to the time the applicant falls out of status, changes status, or departs the U.S. for an extended period of time.

This fee is new and goes into effect September 1, 2004. SEVIS fee payments will be used by the United States Department of Homeland Security to fund the Student and Exchange Visitor Program. This program makes it possible for international students and exchange visitors to attend schools in the United States. The fee also funds the Student Exchange Visitor Information System (SEVIS), a computer system employed to track international students and exchange visitors during their stays in the United States.

Who must pay the SEVIS fee and when?

You will need to pay the SEVIS fee if you were issued a Form I-20 or Form DS-2019 on or after September 1, 2004 AND one of the following conditions applies:

- 1) You are seeking an F-1 or J-1 visa from a United States embassy or consulate for first-time attendance in a degree program or research program. In this case, the SEVIS fee must be paid BEFORE visa issuance.
- 2) You hold a valid F-1 or J-1 visa, you have been absent from the United States for a period of more than 5 months (not working on your studies during this time with the prior approval of your school), and you will re-enter the U.S. for a new program. In this case, the SEVIS fee must be paid BEFORE re-entry to the U.S.

NOTE: If you are a citizen of Canada or a resident of a contiguous territory or adjacent island (and therefore exempt from visa stamp requirements) and you still plan to apply for admission at port-of-entry to begin initial attendance at a U.S. school in F or J classification, you still must pay the fee before entry to the U.S. You will have to secure a receipt of fee payment by following the guidelines above and show that receipt at the U.S. Port of Entry.

F-2 and J-2 visa holders, the spouse and dependents of respective F-1 and J-1 visa holders, are not required to pay the SEVIS fee.

How much is the SEVIS fee and how do I pay it?

The SEVIS fee is US\$ 100. This fee is separate from and in addition to the visa application fee. The SEVIS fee must be paid by the Internet or by mail. It cannot be paid at a U.S. embassy or consulate and it cannot be paid at port of entry.

The fee can be paid by one of two means:

- 1) Electronically, by completing a form I-901 through the Internet and using a Visa, MasterCard, or American Express credit card. The website is planned to be <http://www.fmjfee.com>. However, the site will not be functional until September 1, 2004.
- 2) By mail, by submitting Form I-901, Fee remittance for Certain F, J, and M Nonimmigrants, together with a check or money order drawn on a U.S. bank and payable in U.S.

currency. Sources for such checks and money orders include banks chartered or operated in the U.S., foreign subsidiaries of U.S. banks, or foreign banks that have an arrangement with a U.S. bank to issue a check, money order, or foreign draft that is drawn on a U.S. bank. The address to which to mail the fee will be provided on the I-901 Form. The form will not be available to the public until September 1, 2004.

A third party such as a friend, family member, or other interested party can pay the fee on your behalf through the same means described above.

A Note About Processing Times and Payment Verification

If you pay the SEVIS fee by Internet, your payment is processed immediately and, at the time you make payment, you can print a receipt directly from your computer. This computer-generated receipt can be used to verify you have paid the fee at an embassy, consular post, or port-of-entry. Mailing the SEVIS fee does not constitute payment. The fee is processed when it is received by DHS. If you mail your payment rather than pay on the Internet, it can take a considerable amount of time for payment to be received and for you to receive a receipt by return mail.

Whether you choose to pay the fee by the Internet or by mail, a paper receipt will be mailed to the address you provide on Form I-901. You may choose to have this receipt sent to you either by regular mail or, at an additional charge, by express delivery.

Embassies and consular posts may be able to verify your fee payment without a receipt in some circumstances, if you pay the fee far enough in advance of your visa interview. Electronic payments must be submitted at least 3 business days in advance of the interview if you will rely on electronic fee verification at the consulate. Mailed payments must be sent in a manner that assures arrival at the DHS address listed on the I-901 at least 3 business days before the scheduled interview.

If I have already paid the SEVIS fee for one school, and then decide to attend another, do I have to pay the fee again?

If you have been accepted to more than one institution and paid the fee using the SEVIS ID number of an institution you will not be attending, you will not have to pay the fee again. Bring the I-20s or DS-2019s of both the school for which you paid the fee and the school you will be attending, as well as your SEVIS fee payment receipt, to the consulate or port-of-entry (if you are applying for a visa, you should bring both of the I-20s or DS-2019s back to the consulate)

Is the SEVIS fee refundable if I am denied a visa?

Once paid, the SEVIS fee is non-refundable, unless paid by mistake, even if your visa is denied or, subsequent to issuance of the visa, you choose not to come to the United States.

If you applied for an F-1 or J-1 visa and paid the SEVIS fee within the last year but were denied a visa, you do not have to pay the SEVIS fee again as long as you re-apply for the same kind of program with 12 months of the initial denial.