

New USCIS Policy Attempts Crack Down on F, J and M Visa Violators

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The new U.S. Citizenship and Immigration Services policy memorandum affecting F, J and M visas and the revised standards for accrual of unlawful presence went into effect in August with a few tweaks.

Under the previous, nearly 20-year old policy for F, J and M visas the accrual of unlawful presence began tolling only after there was a formal finding of a status violation. This might take place weeks or even months after the specific violation occurred with 180 days of unlawful presence equaling a three-year ban from entering the U.S. and accrual of one year or more resulting in a 10-year ban.

Under the new policy, if the violation occurred before August 9, then the accrual of unlawful presence begins accruing on that date unless the visa holder already started accruing unlawful presence in the following situations:

- If admitted until a date certain (as is the case for most student visa holders), unlawful presence begins accruing the day after the authorized period of admission expired.
- If the Department of Homeland Security determines a status violation occurred, unlawful presence begins accruing the day after the department denies a request for an immigration benefit.
- If an immigration judge ordered the nonimmigrant removed, unlawful presence begins accruing the day after the removal order is issued, regardless of whether the decision is appealed.

If the status violation occurred on or after August 9, and an F, M, or J visa holder fails to maintain their status on or after that date, the accrual of unlawful presence begins on the earliest of the following events:

- The day after they no longer pursue the course of study or authorized activity, or the day they engage in unauthorized activity.
- The day after completing the course of study or program, including practical training and any authorized grace period.
- The day after the period of authorized stay expires, if admitted until a date certain.
- The day after an immigration judge orders the nonimmigrant removed, regardless of whether the decision is appealed.

There is a silver lining in the revised policy memo. If an F or M visa holder discovers they fell out of status and files for reinstatement within 5 months after the date of the status violation, then they will not accrue unlawful presence while their reinstatement petition is pending. If the reinstatement petition winds up being

denied, then the accrual of unlawful presence begins the day after the denial is issued.

However, this provision does not apply to J visa holders as reinstatement requests are decided by the U.S. Department of State. Generally, USCIS does not count unlawful presence for J-1 visa holders for the time period they are out of status if their reinstatement is ultimately granted.

There are many other nuances involved in this revised policy memo but again, the bottom line is for F, M, and J visa holders to maintain vigilance about their status and to maintain close contact with their school and employer to ensure there is understanding as to what constitutes a status violation.

If anyone has any questions, please [contact me](#) or any member of [Barley Snyder's Immigration Practice Group](#).

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