Order Code RL31146

CRS Report for Congress

Foreign Students in the United States: Policies and Legislation

Updated May 11, 2007

Chad C. Haddal
Analyst in Immigration Policy
Domestic Social Policy Division

Prepared for Members and Committees of Congress

Foreign Students in the United States: Policies and Legislation

Summary

Five years after the September 11, 2001, terrorist attacks by foreign nationals — including several terrorists on students visas — the security concerns over foreign student visas are being weighed against competitiveness concerns. Potential foreign students, as well as all aliens, must satisfy Department of State (DOS) consular officers abroad and immigration inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the Immigration and Nationality Act, which include security and terrorist concerns. The consular officers who process visa applicants are required to check the consolidated Terrorist Screening Database (TSDB) before issuing any visa. In part because of these security measures, student visa debates have expanded to include both security and market-based discussions.

Higher education institutions in the United States are concerned over their ability to attract the numbers and quality of foreign students, and whether the post-September 11 security measures impede the entry of potential students into the U.S. education system. The fields of science, technology, engineering and mathematics (STEM) increasingly rely on foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has a high demand for the skill-sets produced in these fields of study, and the STEM students often provide a major link between the academic community and the labor market. Consequently many groups in higher education and the private sector are seeking to expand pathways for foreign students to emigrate.

All nonimmigrant students are issued visas from one of three categories, and are monitored and tracked by the Department of Homeland Security (DHS). The three visa categories used by foreign students are F visas for academic study; M visas for vocational study; and J visas for cultural exchange. The numbers admitted have more than doubled over the past two decades. In FY1979, the total number of foreign student and cultural exchange visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued. In FY2005, DOS issued 565,790 visas to F, J, and M nonimmigrants, making up 10.5% of all nonimmigrant visas issued. The Student and Exchange Visitor Information System (SEVIS) aims to manage the tracking and monitoring of foreign students. Participation in the SEVIS program is now mandatory for all higher education institutions enrolling foreign students.

Issues related to foreign students continue to arise. Foreign student funding, as well as English-language competency, have raised concerns with some universities, advocacy groups, and other observers. Additionally, some recent legislation has focused on attracting foreign students in STEM fields. Legislation introduced in the House (H.R. 1645) and in the Senate (S. 1348) would create pathways to legal permanent residence for foreign students in the STEM fields of study. Although there are provisions in this legislation for undergraduate students, the emphasis has been on students obtaining advanced degrees. This report will be updated as warranted.

Contents

List of Figures

Foreign Students in the United States: Policies and Legislation

Background[1]

Since the Immigration Act of 1924, the United States has expressly permitted foreign students to study in U.S. institutions. Most foreign students are at least 18 years old and are enrolled in higher education programs. If they attend public high schools in the United States, the law requires that foreign students pay tuition, with some exceptions. It also bars the admission of foreign students for the purpose of attending public elementary schools. Although foreign students are also barred from receiving federal financial assistance, many are successful at gaining financial assistance from the colleges and universities they attend.[2]

Foreign students are generally considered to enrich cultural diversity of the educational experience for U.S. residents as well as enhance the reputation of U.S. universities as world-class institutions. Concerns have arisen in recent years that have caused Congress to take a new look at the Immigration and Nationality Act (INA) provisions that govern their admission. The September 11, 2001 terrorist attacks conducted by foreign nationals — including several terrorists on foreign student visas — raised a series of questions about foreign students in the United States, their rights and privileges, the extent to which the U.S. government monitors their presence in this country, and whether U.S. policy hampers the ability of domestic higher education institutions to attract foreign students.

Foreign Student Visas

There are three main avenues for students from other countries to temporarily come to the United States to study, and each involves admission as a nonimmigrant. A nonimmigrant is an alien legally in the United States for a *specific purpose* and a *temporary period* of time. There are more than 20 major nonimmigrant visa categories, and they are commonly referred to by the letter that denotes their

---

[1] This report was originally authored by Ruth Ellen Wasem.

[2] T.B. Hoffer, V. Welch, Jr., K. Williams, M. Hess, K. Webber, B. Lisek, D. Loew, and I. Guzman-Barron, *Doctorate Recipients from United States Universities: Summary Report 2004* (Chicago: National Opinion Research Center, 2005). (The report gives the results of data collected in the Survey of Earned Doctorates, conducted for six federal agencies, NSF, NIH, USED, NEH, USDA, and NASA by NORC), p.60.

subsection in the law.[3] The three visa categories used by foreign students are F visas for academic study; M visas for vocational study; and J visas for cultural exchange.

F Visa

The most common visa for foreign students is the F-1 visa. It is tailored for international students pursuing a full-time academic education. The F-1 student is generally admitted as a nonimmigrant for the period of the program of study, referred to as the duration of status.[4] The law requires that the student have a foreign residence that they have no intention of abandoning. Their spouses and children may accompany them as F-2 nonimmigrants.

To obtain an F-1 visa, prospective students also must demonstrate that they have met several criteria:

- They must be accepted by a school that has been approved by the Attorney General.[5]
- They must document that they have sufficient funds or have made other arrangements to cover all of their expenses for 12 months.[6]
- They must demonstrate that they have the scholastic preparation to pursue a full course of study for the academic level to which they wish to be admitted and must have a sufficient knowledge of English (or have made arrangements with the school for special tutoring, or study in a language the student knows).

Once in the United States on an F visa, nonimmigrants are generally barred from off-campus employment. Exceptions are for extreme financial hardship that arises after arriving in the United States and for employment with an international organization.[7] F students are permitted to engage in on-campus employment if the employment does not displace a U.S. resident. In addition, F students are permitted to work in practical training that relates to their degree program, such as paid research and teaching assistantships. An alien on an F visa who otherwise accepts employment violates the terms of the visa and is subject to removal and other penalties discussed later in this report.

---

[3] §101(a)(15) of INA.

[4] Those entering as secondary school students are only admitted for one year.

[5] Schools that wish to receive foreign students must file a petition with DHS district director. The particular supporting documents for the petition depend on the nature of the petitioning school. Once a school is approved, it can continue to receive foreign students without any time limits; however, the approval may be withdrawn if DHS discovers that the school has failed to comply with the law or regulations.

[6] F, J, and M students are barred from federal financial aid. See §484(a)(5) of the Higher Education Act of 1965, as amended.

[7] The Immigration Act of 1990 created an F-1 pilot employment program, but authority for this pilot off-campus work program expired Sept. 30, 1996.

J Visa

Foreign students are just one of many types of aliens who may enter the United States on a J-1 visa, sometimes referred to as the Fulbright program. Others admitted under this cultural exchange visa include scholars, professors, teachers, trainees, specialists, foreign medical graduates, international visitors, au pairs, and participants in student travel/work programs. Those seeking admission as a J-1 nonimmigrant must be participating in a cultural exchange program that the U.S. Department of State's Bureau of Educational and Cultural Affairs (BECA)[8] has designated. They are admitted for the period of the program.[9] Their spouses and children may accompany them as J-2 nonimmigrants.

Responsible officers of the sponsoring organizations must be U.S. citizens. The programs that wish to sponsor J visas also must satisfy the following criteria:

- be a bona fide educational and cultural exchange program, with clearly defined purposes and objectives;
- have at least five exchange visitors annually;
- provide cross-cultural activities;
- be reciprocal whenever possible;
- if not sponsored by the government, have a minimum stay for participants of at least three weeks (except for those designated as "short term" scholars);
- provide information verifying the sponsoring program's legal status, citizenship, accreditation, and licensing;
- show that they are financially stable, able to meet the financial commitments of the program, and have funds for the J nonimmigrant's return airfare;
- ensure that the program is not to fill staff vacancies or adversely affect U.S. workers;
- assure that participants have accident insurance, including insurance for medical evacuations; and
- provide full details of the selection process, placement, evaluation, and supervision of participants.[10]

As with F visas, those seeking J visas must have a foreign residence they have no intention of abandoning. However, many of those with J visas have an additional foreign residency requirement in that they must return abroad for two years if they wish to adjust to any other nonimmigrant status or to become a legal permanent resident in the United States. This foreign residency requirement applies to J nonimmigrants who meet any of the three following conditions:

---

[8] This bureau was formerly the United States Information Agency (USIA).

[9] As with secondary students entering with F-1 visas, J-1 students in secondary school programs are only admitted for up to one year.

[10] 22 CFR §514.

- An agency of the U.S. government or their home government financed in whole or in part — directly or indirectly — their participation in the program.
- The BECA designates their home country as clearly requiring the services or skills in the field they are pursuing.
- They are coming to the United States to receive graduate medical training.

There are very few exceptions to the foreign residency requirement for J visa holders who meet any of these criteria — even J visa holders who marry U.S. citizens are required to return home for two years.[11] Although many aliens with J-1 visas are permitted to work in the programs in which they are participating, the work restrictions for foreign students with a J-1 visa are similar to those for the F visa.

M Visa

Foreign students who wish to pursue a non-academic (e.g., vocational) course of study apply for an M visa. This visa is the least used of the foreign student visas. Much as the F students, those seeking an M visa must show that they have been accepted by an approved school, have the financial means to pay for tuition and expenses and otherwise support themselves for one year, and have the scholastic preparation and language skills appropriate for the course of study. Their spouses and children may accompany them as M-2 nonimmigrants. As with all of the student visa categories, they must have a foreign residence they have no intention of abandoning. Those with M visas are also barred from working in the United States, including in on-campus employment.

Duration of Status Visa

Although most nonimmigrants are admitted with visas that have a precise expiration date, foreign postsecondary students are admitted for "duration of status," which lasts as long as they are full-time students or participating according to the terms of their exchange programs. It is difficult for DHS to know when foreign students have overstayed because the duration of status lacks a fixed termination date and schools, although required to report students who stop attending, have not been required until recently to systematically report data on the progress of the foreign student (see below).

For many years, a foreign student was admitted for only one year and had to renew his or her visa each subsequent year for as long as he or she was enrolled. The former-INS then issued regulations in 1978 and 1981 allowing for visa validity periods longer than one year. In regulations in 1983 and 1987 that were aimed at "eliminating burdensome paperwork," the same agency reduced the reporting

---

[11] INA §212(e) provides only a few exceptions, including cases of exceptional hardship to the spouse or child of a J-1 if that spouse or child is a U.S. citizen or permanent resident alien and in cases of persecution on the basis of race, religion, or political opinion if the alien returned home, and if it is in the national interest not to require the return.

requirements and established the "duration of status" policy that remains in practice currently.[12]

Processing, Screening, and Reporting

Agency Involvement

Nonimmigrant foreign students are processed by four different federal agencies during their tenure as applicants to and foreign students at United States higher education institutions. The first U.S. institution involved is the Department of State (DOS), which conducts the applicant interviews and either grants or rejects the visa applications. Once a nonimmigrant arrives at a United States port of entry, the individual receives an inspection by the Customs and Border Protection (CBP). The student's arrival is reported to the Immigration and Custom Enforcement (ICE) for entry in to the Student and Exchange Visitor Information System (SEVIS). After entry, the alien's academic institution is responsible for reporting information to the SEVIS database. The SEVIS information is then shared with DOS, CBP, and the U.S. Citizenship and Immigration Services (USCIS). The latter agency is responsible for adjudicating any adjustments in visa status the foreign students wishes to make.

Screening Procedures

Potential foreign students, as well as all aliens, must satisfy DOS's consular officers abroad and DHS inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the INA. These criteria include security and terrorist concerns as well as health-related grounds and criminal history.[13] Some provisions may be waived/overcome in the cases of nonimmigrants, refugees, and certain other aliens. To become a nonimmigrant, aliens also must demonstrate that they are not "intending immigrants" (i.e., wanting to reside permanently in the United States).[14]

In terms of criminal, security and terrorist concerns, the consular officers who process visa applicants are required to check the consolidated Terrorist Screening Database (TSDB)[15] before issuing any visa; thus, the names of foreign students are

---

[12] *Federal Register*, vol. 44, Nov. 22, 1978, p. 54620; *Federal Register*, vol. 46, Jan. 23, 1981, p. 7267; *Federal Register*, vol. 48, Apr. 5, 1983, p. 14575; and *Federal Register*, vol. 52, Apr. 22, 1987, p. 13223.

[13] §212(a) of INA lists the grounds for inadmissibility categories as: health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; lacking proper documents; ineligible for citizenship; and, aliens previously removed. For more information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

[14] For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

[15] The TSDB is maintained by the Terrorist Screening Center (TSC), which is a multiagency (continued...)

run through various databases, as are those of all other nonimmigrants seeking a visa to enter the United States. In FY2005, DOS identified 333 potential nonimmigrants (i.e., foreign nationals coming temporarily) as inadmissible because of security or terrorist concerns.[16] In comparison, DOS identified 7,454 potential nonimmigrants as inadmissible on criminal grounds in FY2005. It is not known how many, if any, of these potential nonimmigrants were seeking to enter the United States on student visas.

The Immigration and Nationality Act of 1952 originally included a requirement that all visa applicants be fingerprinted, with waivers for A visa (diplomats) and G visa (representatives of international organizations) nonimmigrants.[17] The statutory requirement for fingerprinting nonimmigrants was repealed in 1986, but the Attorney General still has the discretionary authority to require fingerprints of aliens applying for nonimmigrant visas "for the purposes of identification and investigation."[18]

Security Concerns

In 1995, the former-INS began a review of the admission and monitoring of foreign students. Impetus for the review came in part from former Federal Bureau of Investigation Director Louis Freeh who expressed concern that possible terrorists could use foreign student status as a way of entering the United States.[19] Those concerned with the security risks of the foreign student visa often pointed out that one of the men convicted in the 1993 World Trade Center terrorist bombing had entered the United States on a student visa, dropped out of school, and yet stayed in the country.

Former INS Commissioner Doris Meisner emphasized plans to automate a foreign student reporting and monitoring system when she testified before the Senate Committee on the Judiciary's Subcommittee on Immigration in 1995.[20] The former-INS had not been maintaining the addresses of foreign students, and reviews of the

---

[15] (...continued)
collaborative effort administered by the Federal Bureau of Investigation (FBI). For more information, see CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger Prescreening*, by William J. Krouse and Bart Elias.

[16] The inadmissibility of members and supporters of foreign terrorist organizations can be waived under §212(d), which provides the Attorney General with that authority, if he deems that it is in the national interest to do so. Such waivers are usually granted at the request of the Secretary of State, with the concurrence of the Attorney General.

[17] Immigration and Nationality Act of 1952, P.L. 82-414.

[18] Immigration and Nationality Amendments of 1986, P.L. 99-653. See CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno.

[19] For a discussion of Mr. Freeh's memorandum, see *Interpreter Releases*, vol. 71, Dec. 19, 1994.

[20] U.S. Congress, Senate Committee on the Judiciary, *Examining Nonimmigrant Immigration Issues*, hearing, 104th Cong., 1st sess., Sept. 28, 1995, S.Hrg. 104-814, Serial No. J-104-48 (Washington: GPO, 1995).

reporting system questioned the accuracy of the data.[21] The National Commission on Terrorism, a bi-partisan commission established by Congress, cited the vulnerability of the foreign student visa in its June 2000 report, which recommended, among other things, that the former-INS automated system to monitor foreign students be enhanced and expanded.[22] Reports that several of the terrorists involved in the September 11 attacks entered the United States on foreign student visas led many others to echo earlier calls for a better monitoring system.

Student and Exchange Visitor Information System (SEVIS)

When Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, it added statutory language mandating that the Attorney General (now Secretary of Homeland Security), in consultation with the Secretaries of State and Education, develop by January 1, 1998, a program to collect data on F, J, and M nonimmigrants from at least five countries. By 2003, the data collection requirement included all countries. This provision, §641 of IIRIRA, requires that DHS collect the following data elements:

- identity and address of the alien;
- nonimmigrant classification of the alien, date of visa issuance, and any change or extension;
- academic status of the alien (e.g., full-time enrollment); and
- any disciplinary action taken by the school, college, or university as a result of a crime committed by the alien.

DHS is to collect the information electronically "where practical." According to §641 of IIRIRA, educational institutions are required to report this information to DHS as a condition of continued approval to enroll foreign students.[23]

From June 1997 to October 1999, the former-INS conducted the first pilot program known as the Coordinated Interagency Partnership Regulating International Students (CIPRIS) at 21 educational institutions in Georgia, Alabama, North Carolina, and South Carolina, at Atlanta's Hartsfield Airport, and at the former-INS Texas Service Center. In July 2001, the former-INS announced that the second phase of its foreign student monitoring system, referred to as the Student and Exchange Visitor Information System (SEVIS), would begin at 12 Boston area institutions.

---

[21] There have long been record keeping requirements for schools with foreign students covering such information as name, address, country of citizenship, enrollment status, and field of study. The regulations were revised in 1983 so that schools no longer had to report changes in status directly to the former-INS. Since 1983, schools have had 3 business days to respond to requests for information about a foreign student. DHS can bar schools that did not meet record keeping requirements from enrolling foreign students. (8 CFR §214.3(g)(1))

[22] National Commission on Terrorism, *Countering the Changing Threat of International Terrorism*, June 5, 2000. For a discussion of this report, see CRS Report RS20598, *National Commission on Terrorism Report: Background and Issues for Congress*, by Raphael F. Perl.

[23] The law also required, as of Apr. 1, 1997, that the educational institutions collect a fee (not to exceed $100) from each of the foreign students to remit to the Attorney General to carry out the program. The 106th Congress amended this provision so that INS rather then the institutions would collect the fee (P.L. 106-396).

According to published statistics, there are currently 8,803 SEVIS-approved schools and 915,531 current active international non-immigrant students, exchange visitors, and their dependants in SEVIS.[24]

Prior to September 11, 2001, some university officials argued they would be turned into an enforcement agent of the former-INS and expressed concern that the confidentiality of their student records would be compromised.[25] Although educational institutions stopped their calls to repeal §641 of IIRIRA after the terrorist attacks and now support a tracking system, many educational institutions across the country expressed frustration about these new reporting requirements. They argued that the SEVIS is burdensome and that DHS is not providing training to staff who must use SEVIS.[26] All continuing foreign students were required to be entered into SEVIS as of August 2003.[27]

Following the full implementation of SEVIS in 2003, there has not been much legislative activity on foreign student monitoring. Some believe that SEVIS has been left relatively unaltered due to high profile incidents have positively contributed to the SEVIS image with the general public. Notably, the data from SEVIS resulted in the detection of several instances of unaccounted alien students, including some as recent as the summer of 2006. In this high profile incident, 11 Egyptian student visa holders were admitted at U.S. ports of entry, but never reported to classes or to the appropriate SEVIS officials at Montana State University. University officials reported the absence to DHS, which was able to locate and apprehend all of the 11 students.[28] Incidents such as this one are generally accepted as indicators that SEVIS is working as intended.

At this time, most observers view the SEVIS system as adequate for monitoring students and alerting authorities to suspicious behavior or unlawful movement. Yet, concerns continue with respect to whether increased security is detracting from the United States' ability to attract the number and quality of foreign students that higher education proponents advocate. The fields of science, technology, engineering and mathematics (STEM) have become particularly dependent upon foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has a high demand for the skill-sets produced in these fields of study, and the STEM students can provide a major link between the academic community and the labor market. Consequently, with security measures now implemented, many

---

[24] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Student and Exchange Visitor Information System: General Summary Quarterly Report*, Feb. 20, 2006, p. 5, at [http://www.ice.gov/doclib/sevis/pdf/quarterly_report_dec06v4.pdf], visited May 8, 2007.

[25] *Interpreter Releases*, vol. 74, Mar. 17, 1997.

[26] Statement of Terry W. Hartle, American Council on Education, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, hearing, *INS's Implementation of the Foreign Student Tracking Program*, Sept. 18, 2002, at [http://www.house.gov/judiciary/immigration.htm].

[27] *Federal Register*, vol. 67, no. 238, Dec. 11, 2002, pp. 76256-76280.

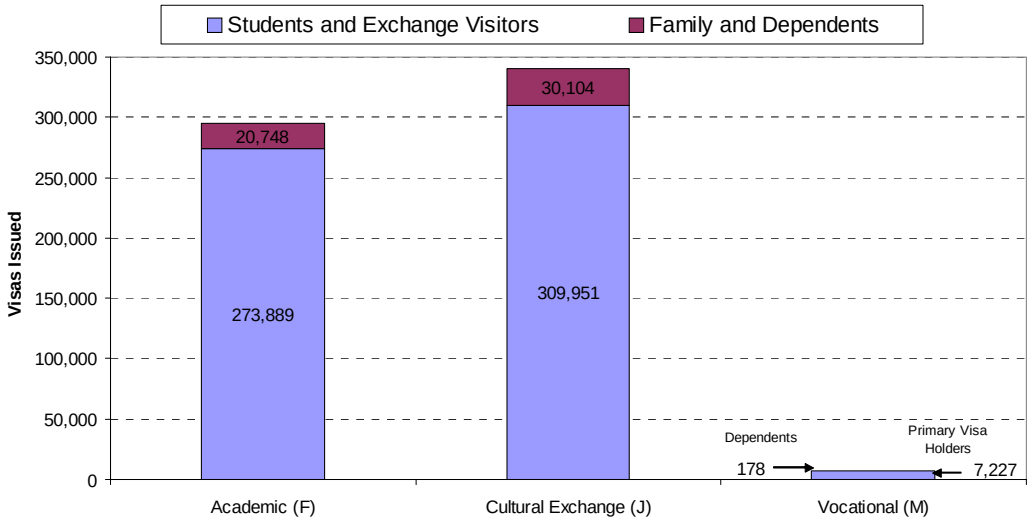
[28] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *SEVIS Newsletter*, vol. 3 no. 3 (October 2006), p. 1.

groups in higher education and the private sector are seeking to develop pathways to immigration for foreign students.

Trends and Characteristics

Foreign students have been coming to study in the United States for almost a century, and the numbers admitted have more than doubled over the past two decades. In FY1979, the total number of F and J visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued.[29] In FY1989, the number of F, M, and J visas had grown to 373,932, constituting 5% of all nonimmigrant visas DOS issued. By FY2006, the most recent year data are available, DOS issued 642,097 visas to F, J, and M nonimmigrants, and these categories made up 11% of all nonimmigrant visas issued.[30] As **Figure 1** illustrates, J cultural exchange visitors lead all student visa categories with 340,055 visas issued in FY2006.[31] The F academic students followed with 294,637, and the M students trailed with 7,405 visas issued in FY2006.

Figure 1. F, J, and M Nonimmigrant Visas Issued in FY2006



Source: CRS presentation of U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2006* data.

Note: While Department of State data from the *Report of the Visa Office: 2006* on the program type of the J visa recipient are not available, the *Open Doors2006* survey by the Institute of International Education reports that roughly 5% of foreign students are on J visas, but over half of international scholars are on J visas.

The largest sending region of the world for F and M student visas is Asia, as **Figure 2** depicts. The latest available data show Asia having 65% of the 301,985

---

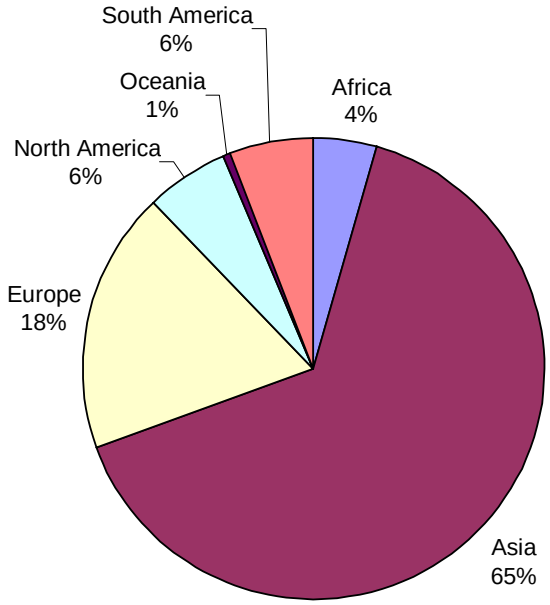
[29] The M visa was not established until 1981 by P.L. 97-116.

[30] U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2006*.

[31] Although a large number of J visa holders are exchange students, a number are participants in work exchange programs and other non-academic programs.

visas issued to F and M nonimmigrants in FY2006, representing 196,281 visas issued. Europe had the second largest portion with roughly 18%, or 55,349. North and South American countries had smaller portions, with 17,736 and 17,415, respectively, or approximately 6% each. Africa's share of F and M nonimmigrant visas issued was 13,233 or roughly 4% of the total, while Oceania's 1,971 visas issued constituted approximately 1% of the total for F and J visas.

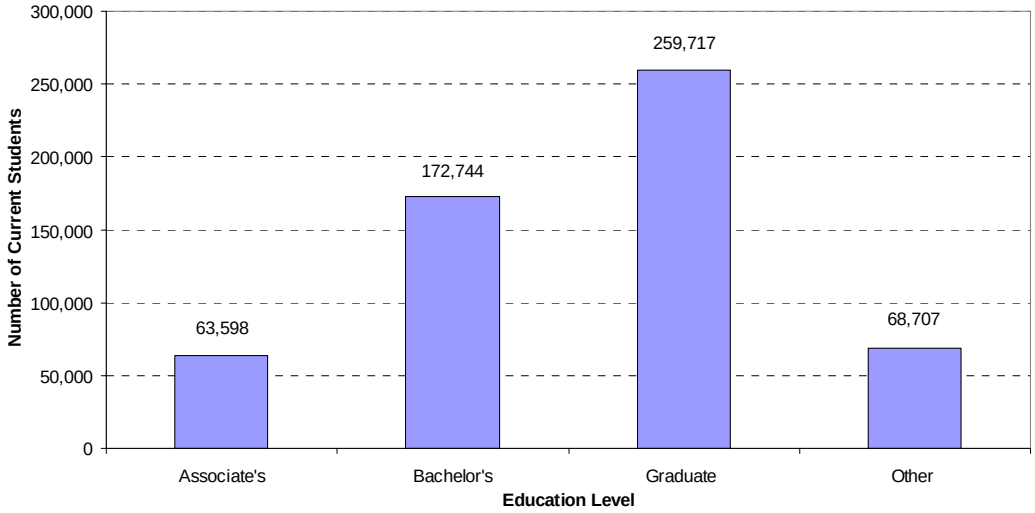
Figure 2. Region of Origin for F and M Nonimmigrants, FY2006



Source: CRS presentation of U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2006* data.

According to International Educational Exchange's *Open Doors* survey of U.S. colleges and universities, the largest group (46%) of foreign students enrolled in 2005-2006 were in graduate degree programs.[32] As **Figure 3** presents, the second largest portion (31%) were enrolled in undergraduate degree programs. An additional 11% were enrolled in associate degree programs. Foreign students enrolled in other programs (including practical training programs) comprised 12% of the foreign student total.[33]

Figure 3. Academic Levels of Foreign Students, 2005-2006



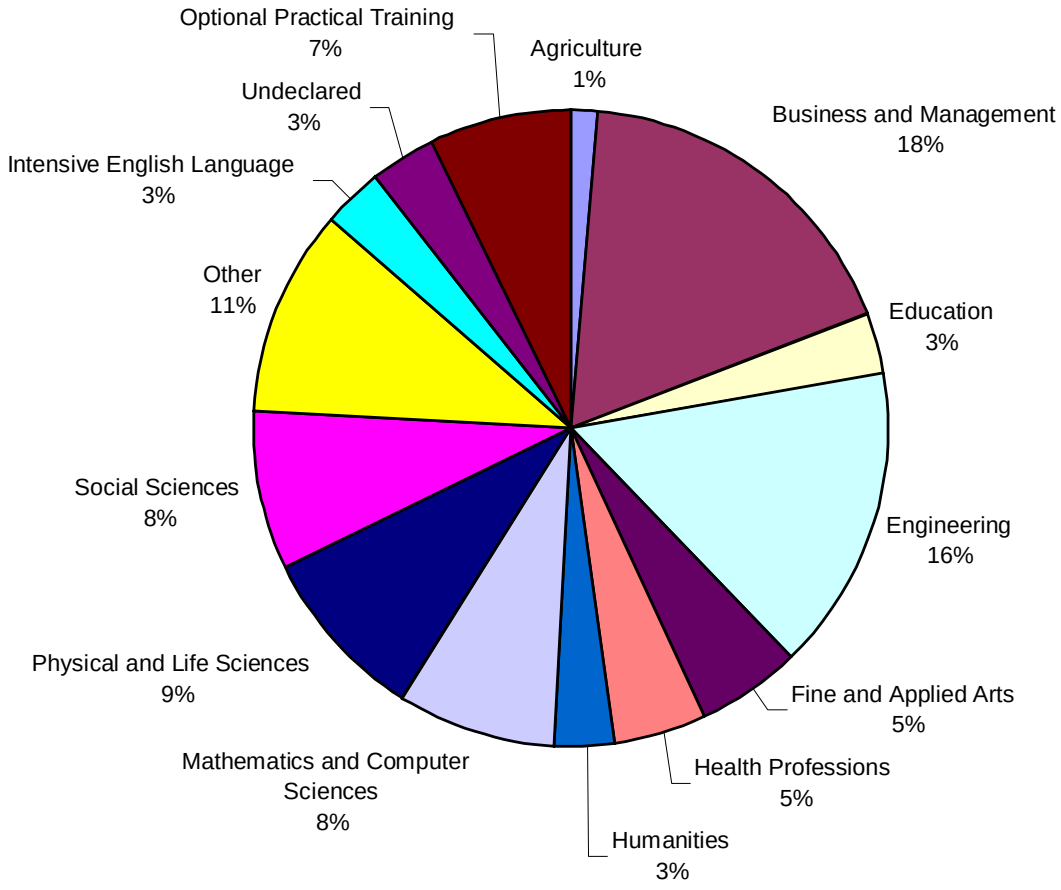
Source: CRS Presentation of data from the *Institute of International Education's Open Doors: Report on International Educational Exchange, 2006*.

[32] Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006.

[33] Trade schools, such as flight schools, generally do not participate in this privately-conducted annual survey.

The fields of study undertaken by foreign students appear to be quite diverse, as **Figure 4** shows. The largest category is business and management, which is the field of study for 18% of foreign students. Engineering along with mathematics and computer sciences follow with 16% and 8%, respectively. The number of students participating in optional practical training has seen a marked increase in the last couple of years and currently accounts for 7% of foreign students' major study fields.[34]

Figure 4. Major Fields of Study for Foreign Students, 2005-2006



Source: CRS Presentation of data from the *Institute of International Education's Open Doors: Report on International Educational Exchange, 2006*.

Current Issues

After dedicating the past five years to improving security and tracking measures for foreign students, universities are now gearing their efforts toward attracting foreign students in high-demand fields of study.

---

[34] For example, in 2005/06 there were 41,535 foreign students in optional practical training, while in 2004/05 there were 28,432 foreign students in these same programs (Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006).

Foreign Students and Funding

A newly emerging foreign student focus is the targeting of students intending to specialize in the areas of STEM. This focus is part of a broader movement within higher education that emphasizes STEM-related skill development.[35] Foreign students in these fields of study represent a particularly attractive demographic for most universities since they provide skilled assistants and other forms of research labor during their time of study. Furthermore, undergraduate foreign students pay full tuition and are therefore an important source of revenues for many universities. This is highly relevant in discussions of STEM students, because foreign students constitute a significant portion of the overall STEM student population. For example, data from the National Science Foundation (NSF) show that in 2004, foreign students on nonimmigrant visas accounted for 28.4% of all the doctorates in the sciences and 57.2% of all the doctorates in engineering.[36] Institute of International Education's (IIE) Open Doors data collection shows that STEM students accounted for 33.09% of foreign students in the 2005-2006 academic year.[37]

An ongoing point of contention for both STEM and non-STEM alike has been the availability of fellowships and teaching assistantship funding for foreign graduate students. Although these foreign graduate students are ineligible for direct aid from the government, most receive work-supported aid from the universities, where the funds stem from federally funded research grants to the university. This arrangement has been an ongoing source of controversy.[38] A 2004 study revealed that a greater percentage of financial support for doctoral students goes to non-U.S. citizens than to U.S. citizens. According to the survey, 85.5% of temporary visa doctoral recipients received some form of assistantship, traineeship, fellowship, or dissertation grant as their primary source of funding. By comparison, similar funding support was received by 75.9% of permanent visa holders, 61.6% of U.S. citizens, and 69% of all doctoral recipients.[39] Minority groups claim to be particularly disadvantaged

---

[35] For discussion on domestic STEM development, see CRS Report RL33434, *Science, Technology, Engineering, and Mathematics (STEM) Education Issues and Legislative Options*, by Jeffrey J. Kuenzi, Christine M. Matthews, and Bonnie F. Mangan.

[36] National Science Foundation, Division of Science Resources Statistics, *Science and Engineering Doctorate Awards: 2004*, NSF 06-308, Project Officer, Susan T. Hill (Arlington, VA, 2006), pp. 3-6, 66-67.

[37] *Open Doors 2005: Report on International Educational Exchange*, Hey-Kyung Koh Chin, ed. (New York: Institute of International Education, 2005).

[38] See for example House Subcommittee on Immigration and Claims, Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens, 106th Cong., 1st Sess., Mar. 11, 1999, p.22, prepared statement of Julian R. Betts, Associate Professor, Department of Economics, University of California, San Diego.

[39] T.B. Hoffer, V. Welch, Jr., K. Williams, M. Hess, K. Webber, B. Lisek, D. Loew, and I. Guzman-Barron, *Doctorate Recipients from United States Universities: Summary Report 2004* (Chicago: National Opinion Research Center, 2005). (The report gives the results of data collected in the Survey of Earned Doctorates, conducted for six federal agencies, NSF, NIH, USED, NEH, USDA, and NASA by NORC), p. 60.

by the university support of foreign students.[40] Among ethnic groups, approximately 44% of African Americans and 48.3% of American Indians use their own resources to support their graduate studies, as compared with 32.8% of Caucasians, 32.7% of Hispanics, and 18.1% of Asian Americans.[41]

Foreign Students and Language Competence

Complaints have been levied against the support of foreign graduate students due to the lack of English competence.[42] Foreign students are required to take the Test of English as a Foreign Language (TOEFL) in order to demonstrate that they could effectively study and provide instruction in English. In Asian countries, such as China, cases of identity fraud have occurred at the test taking centers.[43] Students with lower levels of English competence have paid others to conduct the test in their place while falsely presenting themselves as the student seeking admission to a U.S. institution. Universities have had difficulty determining whether TOEFL scores are fraudulent until the student actually arrives in the United States. At this time, written offers of support have already been extended to the student and accepted. Although English-language competency persists as a problem for many programs, some university programs have reacted by not admitting any graduate students from countries with a history of fraudulent TOEFL scores, or requiring additional in-person interviews and making admission conditional upon successfully completing such interviews.[44]

New Pathways to Permanent Residence

Many employers in STEM-related fields find the hiring of U.S. trained alien graduates to be an enticing prospect because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates. For those students on F-category nonimmigrant visas, a relationship with an employer can be built through the use of the optional training period. For up to 12 months after graduation, an F-visa student can serve as an intern for a United States firm without having to adjust his or her visa. Some firms find this option appealing because it can help bring in

---

[40] See for example House Subcommittee on Immigration and Claims, Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens, 106th Cong., 1st Sess., Mar. 11, 1999, p. 33, prepared statement of Frank L. Morris, former Dean, Morgan State University.

[41] *Doctorate Recipients from United States Universities: Summary Report 2004*, p. 60.

[42] Gravois, John, "Teach Impediment - When Students Can't Understand the Instructor, Who Is to Blame?," *The Chronicle of Higher Education*, vol. 51, Apr. 8, 2005, p. A10, and Bollag, Burton, "New Test of English as a Foreign Language Puts an Emphasis on Speaking," *The Chronicle of Higher Education*, vol. 52, Oct. 7, 2005, p. A49.

[43] Mooney, Paul. "Chinese Court Reduces Penalty for Pirating Exams." *The Chronicle of Higher Education*, Jan. 14, 2005, p.35.

[44] Bollag, Burton. "New Test of English as a Foreign Language Puts an Emphasis on Speaking," *The Chronicle of Higher Education*, vol. 52, Oct. 7, 2005, p. A49.

needed skills without being restricted to numerical limits or the same strict criteria as the H-1B visa for nonimmigrant professional workers.[45]

For those students who pursue optional practical training with a U.S. employer, the training period becomes a valuable opportunity to develop a relationship with an employer that could eventually result in an employment-based petition for permanent residence. Any individual wishing to come to the United States as an employment-based legal permanent resident (LPR) must have the employer submit a petition on his/her behalf. Because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates, some employers have pushed for the lengthening of the optional practical training period, as well as the creation of direct pathways to LPR status for foreign students in U.S. higher education institutions.[46] Such proposals are reflected in some recent legislation.

Legislation in the 110th Congress

In the 110th Congress, student visa reform is included as a part of more comprehensive immigration reform in H.R. 1645, the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE), as well as in S. 1348, (entitled "A Bill to Provide for Comprehensive Immigration Reform and for Other Purposes," which is a reintroduction of S. 2611 as passed by the Senate from the 109th Congress). Each of these bills would create a new F-1 visa category specifically designed for foreign students intending to pursue studies in a STEM-related field, while renumbering the old F visa categories.[47] Students obtaining a newly created F-1 nonimmigrant visa would not need to demonstrate an intent of departing the United States upon completion of their studies.[48] Students in this category could also pursue optional practical training periods of up to 24 months after completing their degree. Furthermore, foreign students on F-class nonimmigrant visas would be allowed to pursue off-campus work provided that the employer attempted to first hire a similarly qualified U.S. citizen for a period of 21 days prior to employment. Employers would be required to pay foreign students the higher of the average or prevailing wage in the field of employment. The act would also make provisions to

---

[45] There are many anecdotal accounts of foreign students using the optional practical training period as a means of creating the necessary employer relations for LPR petitions. While some policymakers consider this a natural and positive chain of events, others consider this "F-1 to H-1B to LPR" pathway an abuse of the temporary element of nonimmigrant status and a way to circumvent U.S. worker protection laws. For more discussion of the H-1B nonimmigrant visa, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

[46] For example, see "Ease Immigration for Foreign Grad Students," *Minneapolis Star Tribune*, editorial, Nov. 28, 2005.

[47] This new category would not displace the other categories. Instead, the other F-visas would be renumbered such that the current F-1 would become an F-2, the current F-2 would become an F-3, and the current F-3 would become an F-4.

[48] Under current statute, in order for an applicant to qualify for an F visa, the applicant must appear to have no intention of abandoning his or her foreign residence to permanently migrate to the United States. (INA §101(a)(15)(F))

preserve the visa status of foreign students and exchange visitors who resided within a district declared to have been affected by Hurricane Katrina or Hurricane Rita.

Alongside the addition of the new F-1 visa category, the STRIVE Act would also remove LPR numerical limits on foreign nationals who obtained a master's degree or higher at a U.S. accredited university. Furthermore, others exempted from the numerical limit on LPR status would be aliens who have earned a master's degree or higher in science, technology, engineering, or math (STEM) and have been working in a related field in the United States in a nonimmigrant status during the three-year period preceding their application for an employment-based immigrant visa. These exemptions from LPR numerical limits would not only apply to current and future students, but would also apply to foreign degree recipients of U.S. universities who received their degree prior to the legislation.

With the exception of the provisions for off-campus employment and displaced students from natural disasters, the Securing Knowledge, Innovation and Leadership Act of 2007 (SKIL), or S. 1083, would provide the same visa reforms as those of the STRIVE Act. The bill would create a new F-1 visa category for STEM students and remove the same LPR numerical limits as those proposed to be removed through the STRIVE Act. The SKIL Act was previously included as part of the Comprehensive Immigration Reform Act of 2006 (S. 2611 as passed by the Senate) in the 109th Congress.[49] The SKIL Act is also contained within S. 1348.

[49] One provision that existed in S. 2611 as passed by the Senate that does not exist in the SKIL Act or STRIVE Act is a provision for exchange students. Under the Comprehensive Immigration Reform Act of 2006, a new J-STEM nonimmigrant category would have been created for advanced students in higher education cultural exchange programs. In addition to not needing to demonstrate an intent to depart the United States at the conclusion of their visa duration, J-STEM visa holders would also not have been subject to the two year foreign residency requirement before adjusting to a new status, which current J-class visa holders are subject. (INA §212(e))