



**Statement by Association of American Universities (AAU):
House Judiciary Immigration Subcommittee Hearing on
“Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services”**

July 16, 2019

For the United States to maintain its status as global leader in science and technology, we must continue to depend not only on the best and brightest American students and researchers, but also welcome the best and brightest from around the world. The flow of international students and faculty to the United States brings together people of different cultures, experiences, and expertise who share an intense commitment to study and solve problems and create innovative solutions to national challenges. Their work in American classrooms, laboratories, and hospitals has long contributed to America’s economic competitiveness, security, public health, and well-being.

America’s leading research universities are greatly concerned about UCSIS nonimmigrant visa processing delays and policy changes that have resulted in declining international student enrollment¹ in our member institutions. This statement focuses on the impact of processing delays for Optional Practical Training (OPT) and the Administration’s August 8, 2018 “Accrual of Unlawful Presence” Policy Memorandum, because they illustrate how recent policy changes and processing delays are harming our nation’s ability to attract and retain top international talent. These examples illustrate further the need for greater predictability in the visa process for prospective and current international students and U.S. employers.

Optional Practical Training (OPT)

The OPT program allows students on F-1 visas to enhance their education with valuable experiential learning and on-the-job-training. OPT is a major draw for international students to study in the U.S. and a unique component of the U.S. educational experience. However, OPT applicants are experiencing a significant increase in processing times. In fact, the average processing time for OPT applications has increased from a maximum of 90 days in 2016 to almost 5 months today, according to the Potomac Service Center, which processes the applications for employment authorization for F-1 student visas.²

Since students may only apply 90 days before the start of their work authorization, submitting an application for an Employment Authorization Document (EAD) earlier than 90 days is not possible. As a result of these processing delays, students are unable to begin their work experience or program on time and, in many instances, they may have their training offer rescinded. This harms not only the students, but also the employers seeking to hire qualified, U.S.-trained workers for a practical training opportunity.

AAU institutions have reported that hundreds of OPT applications are still awaiting approval by USCIS. Individuals and host employers have lost valuable weeks and months of practical training

¹ [International Graduate Applications and Enrollment: Fall 2018](#). Council of Graduate Schools, February 2019.

² <https://egov.uscis.gov/processing-times/>

and experienced financial distress while waiting. The following are recent examples AAU collected from its member universities that illustrate the negative consequences of the delayed processing of OPT authorizations:

- “Most students have had to ask their employers to postpone their start dates not once but twice. Many employers are willing to accommodate; however, our students are experiencing great financial difficulties remaining in the United States while waiting for the EAD to be approved. Some students have parental financial support, but most do not. This puts our students under great financial strain. Not to mention that their student health insurance will end soon and, if they are not employed, they will need to find a way to self-insure until they are approved for the EAD and can then elect to sign up for their employer's insurance plan.”
- “A student ended up losing their bioengineering internship at a medical school due to OPT delays. Also, a student with an internship at a children’s hospital was supposed to have an eight-week internship, however, due to the delay in OPT processing, they will barely be able to work three of those weeks.”
- “As of today, we have 29 approvals [out of 90 applications]. It appears that the processing time has unfortunately increased. The average processing time is between 105-110 days now. There is a significant group of students, more than 10 of them, whose applications have been pending for 110 days or more, with some pending for 115, 117, and 120 days.”
- “We have heard from two students who may lose offers if OPT not approved within the next week (as it takes approximately one week after approval to receive EAD card to begin working).”
- “We've received only 10 percent of the EAD cards our students applied for this spring. This time last year almost all of our students were working legally with a valid EAD.”

Accrual of Unlawful Presence for F, J and M Nonimmigrant Visa Holders Policy Memo, August 9, 2018

On August 9, 2018, USCIS issued a Policy Memorandum that would have changed over two decades of consistently enforced policy related to duration of status violations of nonimmigrant F, M, and J visa holders. The proposed policy change would cause significant disruption and harm to educational and research programs at American colleges and universities.

Under the proposed policy, USCIS would rely on the information entered into the Student and Exchange Visitor Information System (SEVIS) to determine if an F, M, or J visa holder violated their immigration status, rather than on an official determination by an immigration judge or the Department of Homeland Security. By equating “unlawful presence” with “failure to maintain status,” this new policy would pose very serious consequences for foreign students. If an individual is found unlawfully present in the United States, they may be barred from reentering the country for a period of three or 10 years. This policy memo created great concern among our international student population and those considering enrollment. It also contributed to the highly problematic trend of the federal government sending an unwelcoming message to international students and scholars whose destination of choice is the United States.

A group of colleges and universities filed a lawsuit³ in a North Carolina federal court to challenge USCIS's change to the policy. The plaintiffs asked the court to declare unlawful and vacate the August 9, 2018 policy memo, and to enjoin its enforcement. In early May, the Hon. Loretta C. Biggs of the U.S. District Court for the Middle District of North Carolina stated that the case could move forward and granted a nationwide preliminary injunction against the policy change because of the "likelihood of success" based on the merits of the plaintiffs' challenges to the unlawful presence memorandum. While the injunction has kept the policy at bay, foreign students and scholars and their host universities remain concerned.

Conclusion

USCIS processing delays for OPT authorizations and the USCIS unlawful presence memo promote uncertainty and concern for talented foreign individuals considering the United States as their top destination. As the global competition for top talent intensifies, our nation must send loud and clear signals in its immigration and visa policies and procedures that the United States welcomes talented students, scholars, scientists, medical professionals, and other talented individuals from around the world. Failure to do this will jeopardize our nation's ability to continue to attract and retain the world's best and brightest individuals and will harm our nation's health, economic, and national security.

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³ [Guilford College et al v. Nielsen et al.](#)