



MARICOPA
COMMUNITY COLLEGES

Office of the
General Counsel
Compliance

Immigrant and Non-Immigrant Visas/Eligibility to Study and In-state Tuition

November 15, 2019

Overall Guidance: When we know of immigration issues (expired visas, visas prohibiting study in the US, etc.) we have an obligation to act according to the law. Federal law does not require proof of legal immigration status for admission to U.S. colleges and universities, but states are allowed to create laws regarding undocumented student admissions to state colleges and universities (in-state tuition rates, outright bans, etc.).

The Basics: Best practices is to have an Immigration Gatekeeper on every campus. This person must have sufficient institutional authority and resources to maintain a sound compliance program, keep track of changes to immigration laws and procedures, communicate those changes to the relevant officials on campus, and be the point person for government visits to campus. The gatekeeper is usually an individual in Human Resources or the International Student/Scholar office who has some expertise and experience, and actually handles visa matters day-to-day. My office will be collecting the names of each campus' Immigration Gatekeeper so we can send information and guidance from District, when necessary.

Immigrant v. Non-immigrant Visas: **Immigrant visas** are issued to foreign nationals who intend to live permanently **in the** United States. **Nonimmigrant visas** are for foreign nationals wishing to enter the United States on a temporary basis - for tourism, medical treatment, business, temporary work, study, or other similar reasons.

What is an I-20? An I-20 is a form and NOT A VISA. This document is issued by a SEVP-certified school and permits a foreign national to enter the United States to study on an F or M visa. There are rules related to where and how a person can study (online or in-class) when they are on an F or M visa.

What is an I-94? The I-94 card is proof of legal entry into the United States for a foreign national who enters the country on a non-immigrant visa. The Customs and Border Protection agent who inspects the foreign national's documents will issue the I-94 card. The I-94 card will state the duration of status (how long the foreign national is allowed to stay in the country).

What is an I-797? I-797 is a Notice of Action and is used by the U.S. government (USCIS) to communicate with applicants. There are seven (7) different I-797 forms. Despite all the I-797 does, it is only a receipt and is not the actual adjustment of status paperwork. However, it is not this document that actually changes the person's status and "makes" one a permanent resident. The physical proof of the change in status comes from the card itself. The card may come in an I-797D Notice of Action, but the actual green card/permanent resident card is what we need to see in order to change the student's status to that of a permanent resident. We cannot accept receipts or Notices of Action as proof of the granting of a visa. Moreover, we do not count backwards in order to qualify a student for in-state tuition (under the residency requirement). If the student could not establish residency (by virtue of the terms of their visa), the time line for establishing residency begins when the visa permits it.

Prior Visa Rule: When a student or applicant presents an I-797 Notice of Action as proof of change of status, we must treat the student as if they are still on their prior visa—the visa from which they are seeking a change. We cannot anticipate that they will be granted the status for which they are applying. As further direction to this effect, in April of 2012 USCIS changed the format of the I-797 to include the following header: **"THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT."** The bottom line is that we will always recognize the visa the person currently holds, even if it is expired due to the filing for a change of status.

Work Authorization Cards: There are over 60 types of work authorization cards. These cards cannot be substituted for a state-issued driver's license or a state-issued **identification card**. Non-immigrants under certain visas can apply for a work authorization card if they fall under certain categories, such as: K-1 fiancé visa holders, asylees, people with a pending application for adjustment of status (a green card) spouses of various visa holders, people with Temporary Protected Status (TPS) or Deferred Enforced Departure (DED), and F-1 students experiencing economic hardship or seeking optional practical training (OPT). Even if someone has a work authorization card but still has their visa status pending, the card itself cannot be used to establish lawful presence and permission to study in the United States.

B Visa Holders: Visitor visas are nonimmigrant visas for persons who want to enter the United States temporarily for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2). Visitor visa holders are not permitted to study in the United States. The foreign national may obtain a B2 visa to temporarily go to school for avocational or recreational purposes. If a student on a B visa is found to be taking classes, USCIS may cancel their visa and a 10 year ban may be imposed on the foreign national barring reentry to the United States.

Qualifying for In-state Tuition: There are two requirements that must be met in order to qualify for in-state tuition. To qualify, a student must:

1. **Establish Lawful Presence:** A student must provide verification of U.S. citizenship, permanent residency, or other lawful immigration status. Lawful immigration status means they have legal authority to be in the United States and also have the authority to go to school while here. DACA students (for example) do not have legal authority to be here, despite their Deferred Action status, even though they have the authority to go to school. Likewise, B Visa holders (for example), while they are legally able to be in the country for

the duration of their Visa, they are not authorized to take classes that are associated with a program of study. F1 visa holders have both the legal authority to be in the United States AND have legal permission to study while here—as long as they study within specific parameters.

2. **Meet the Residency Requirement:** A student must reside in the state of Arizona for one (1) year preceding the official starting day of the semester to be considered an in-state student.

Each student requesting in-state tuition must qualify under BOTH of the aforementioned requirements. There are some nuances that make this double requirement a bit more complicated, but the rule of thumb is to look to see if the visa status held by an applicant allows them to establish residency. NO NON-IMMIGRANT VISA, WITH THE EXCEPTION OF THE H1-B, ALLOWS FOR THE ESTABLISHMENT OF RESIDENCY. Bottom line: If the student holds a non-immigrant visa and it is not an H1-B, they CANNOT establish residency.

Example: I have a student who attended and graduated from a local AZ high school but is on a B1/B2 visa. This student was awarded a Presidential scholarship and she believes she should be allowed the in-state tuition rate. All she has is the I-797 paperwork.

RESPONSE: We cannot grant this student in-state tuition, period, if all she has is the I-797 Notice of Action and has not been granted a visa or status that allows her to establish residency in the U.S. To us, she is still on a B (Visitor/Tourist) visa. In public school (k-12) federal law prohibits the school from asking about immigration status, so a minor visitor or tourist, usually family of the PR or citizen will come over on a tourist or visitor visa (B) and go to school. Now, while it happens a lot, attending a public K-12 school while on a B visa violates the conditions (or terms) of the visa, so if the person is caught, their B visa is cancelled and it becomes virtually impossible for them to get another non-immigrant visa. Now that the student is trying to adjust their status to another visa they may be unable to actually transition, if the government finds out they graduated from an AZ high school while on a B visa. Regardless, colleges are required to ensure students are properly admitted to attend post-secondary school by virtue of the conditions of the visa they have. Remember, this is different from an undocumented student who has no visa or status and can simply apply and opt to pay the out of state tuition.

For additional information on this subject please feel free to email Melissa Flores or Annette Linders.



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