

Recommendations to Update the F-1 Visa Program to Better Accommodate Refugee Students

A university sponsorship program for refugee students, also known as a P4 refugee classification, will allow refugee learners to overcome many of the barriers the F-1 student visa program presents for refugee students seeking educational opportunities in the United States. But not all refugee learners will be fortunate enough to participate in the new university sponsorship program, and many students in conflict-affected areas around the world will still have to rely on obtaining F-1 visas for entry into the United States to study. To make the F-1 program accessible and viable for refugee learners, the Initiative recommends the following modifications.

Administrative Recommendations:

The U.S. Department of Homeland Security (DHS) should announce Special Student Relief (SSR) for all students from countries with “emergent circumstances,” without relying on a request from the regulated community for such action.

- 1 SSR is the suspension of certain regulatory requirements by the DHS secretary for F-1 students from parts of the world that are experiencing emergent circumstances. Regulatory requirements that may be suspended or altered include duration of status, full course of study, and off-campus employment eligibility.

SSR provides international students the opportunity to continue their studies and maintain their international student status. Emergent circumstances are world events that affect F-1 students from a particular region and create significant financial hardships, such as but not limited to:

- Natural disasters;
- Wars and military conflicts;
- National or international financial crises.⁴³

DHS should proactively issue SSR whenever emergent circumstances occur, and the Department of State should follow by announcing Special Student Relief for J-1 students with emergent circumstances.

- 2 Special Student Relief (SSR), Temporary Protected Status (TPS), and Deferred Enforced Departure (DED):

Special Student Relief (SSR) should be available independent of an announcement of Temporary Protected Status (TPS) or Deferred Enforced Departure (DED), although such announcements should automatically trigger a process for announcing SSR for students from affected countries.

Although the country circumstances required for a TPS designation and an announcement of SSR are commensurate, there is too often a delay in between a TPS designation and an SSR announcement. As a result, impacted students are forced to meet their academic and financial obligations while undergoing the trauma of watching what is happening in their home countries. While TPS and SSR for Burma were announced within the same two days in late May 2021, students from other countries have had to wait far longer. For example, TPS for Haitian citizens was announced on May 22, 2021, but SSR for Haitian international students was not announced until August 3, 2021. Similarly, Syrian TPS was announced on March 19, 2021, but SSR was not issued until nearly a month later on April 22, 2021.

TPS and DED are necessary but not sufficient for students from conflict-affected countries who wish to continue their studies. For example, in 1998, SSR was issued for students affected by the Asian Financial Crisis, and in 2005 during the aftermath of Hurricane Katrina, SSR was issued for international students who resided in areas affected by the hurricane.⁴⁴ Thus, SSR should continue to be available independent of a TPS or DED designation, but DHS should create an automated process whereby the granting of TPS or DED triggers an SSR designation as well.

The U.S. Department of State should re-issue consular guidance and ensure training regarding how to interpret immigrant intent.

- 1** Restore F-1 “residence abroad” language to the Foreign Affairs Manual (FAM) and clarify how non-immigrant intent should be viewed for refugee students. On August 8, 2017, DOS updated its FAM guidance on residence abroad for F-1 students, removing long-standing language that instructed consular officers to consider the “inherent difference” between a young F-1 visa applicant and a short-term B visa applicant. The current FAM entry now applies the standard nonimmigrant residence abroad entry of 9 FAM 401.1-3(F)(2) to F-1 students as well. DOS should restore the following well-crafted language to the FAM and provide training to consular officers regarding international student visas:
 - (U) The context of the residence abroad requirement for student visas inherently differs from the context for B visitor visas or other short-term visas (See 9 FAM 401.1-3(F)(2)). The statute clearly presupposes that the natural circumstances and conditions of being a student do not disqualify that applicant from obtaining a student visa. It is natural that the student does not possess ties of property, employment, family obligation, and continuity of life typical of B visa applicants. These ties are typically weakly held by student applicants, as the student is often young, single, unemployed, without property, and is at the stage in life of deciding and developing his or her future plans. Student visa adjudication is made more complex by the fact that students typically stay in the United States longer than do many other nonimmigrant visitors.
 - (U) The residence abroad requirement for a student should therefore not be exclusively connected to “ties.” You must focus on the student applicant’s immediate intent, rather than trying to predict what the student may or may not do following completion of studies. Another aspect to consider: students’ typical youth often means they do not necessarily have a long-range plan, and hence are relatively less likely to have formed an intent to abandon their homes. Nonetheless, you must be satisfied at the time of application for a visa that the visa applicant possesses the present intent to depart the United States at the conclusion of his or her approved activities. That this intention is subject to change is not a sufficient reason

to refuse a visa. Although students may apply to change or adjust status in the United States in the future, this is not a basis to refuse a visa application if the student's present intent is to depart at the conclusion of his or her studies.⁴⁵

The following language should also be added:

- (U) For refugee students and students from conflict-affected countries, you must only focus on evaluating the student applicant's immediate intent to enroll as a bona fide student and should be satisfied by an intent to return when conditions in the conflict-affected country of origin are normalized.
- 2 Instruct consular officers, as has been done in the past, that attendance at a lesser-known college, English language program, or a community college is not, in itself, a reason for refusing a student visa applicant.⁴⁶ The DOS should leave questions of academic choice and qualifications to be decided between the student and the institution and should instead focus on evaluating whether the student meets the requirements of a bona fide student. Furthermore, denial of a visa should not occur based on English-language competency, as it is the purview of the institutions to evaluate language proficiency and to provide English-language training programs (either in-house or outsourced), if necessary, to help students succeed.
 - 3 Ensure consistent application of consular guidance and/or provide training on how to assess financial means and travel documents.
 - When assessing financial means, consular officials should not ask for proof of multiple years of funding. Just like U.S. students, many students and their families will pay for their education as they go. Proof of funding for the entire duration of the program is not reasonable and should not be required. The language of the Foreign Affairs Manual updated on 5/27/21 gives the appropriate guidance about financial means, but inconsistencies still exist, with some consulates still requesting proof of cash for multiple years of funding.⁴⁷
 - Ensure consular officers are familiar with Convention Travel Documents (CTDs) and what rights the CTD provides, including in particular the right to return to the country of asylum.
 - 4 Provide transparent and clearly understandable information to students and to Congress about visa denials. Often, when prospective students are denied visas they are left to guess what aspects of their application may have led to the denial. When a student visa is denied, the prospective student should be provided a clear written explanation for the denial. Additionally, the Department of State should be required to provide an annual report to Congress about student visa denials, including a numerical breakdown of student visa denials and reasons by consulate, student country of origin, and student country of residency.
 - 5 Provide alternatives to in-person consular interviews for refugees who live in a country that restricts refugee movement within that country. In Kenya, for example, camp-based refugees need permission to travel to Nairobi, where the U.S. embassy is located. Although they can get permission to travel for such embassy appointments, the process can be slow and uncertain.
 - 6 Convey to EducationUSA all policy changes and updates to facilitate the ability of overseas advisors to guide students in navigating the visa process.

Legislative Recommendations:

Congress should expand “Dual Intent” to include F-1 students.

Due to outdated immigration law, student visas are, by legal definition, temporary: the student must prove that they are entering the United States in non-immigrant status and do not have an intent to immigrate to the U.S. Thus, the F-1 visa does not, as currently designed, provide durable protection to refugees.

However, current immigration law already permits dual intent in other nonimmigrant categories, such as specialty workers (H-1B) and intracompany transferees (L-1). Higher education, foreign policy, and business leaders have advocated for expanding dual intent for international students applying for F-1 visas to attend U.S. colleges and universities. The Initiative recommends that Congress enact the legislative language on dual intent from Section 3408 the U.S. Citizenship Act of 2021. Expanding dual intent to include students would permit individuals who are being considered for an F-1 visa or who are entering the United States to communicate an interest in transferring to another legal status after the completion of their degree, an interest the current law prohibits.⁴⁸