

p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on August 31, 2010, 75 FR 53317–53319.

The meeting will be two days October 6, 2010, 7 p.m. to October 7, 2010, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

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DEPARTMENT OF HOMELAND SECURITY

[Docket No. ICEB–2010–0003]

RIN 1653–ZA01

Employment Authorization for Haitian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the January 12, 2010 Earthquake in Haiti

AGENCY: U.S. Immigration and Customs Enforcement; DHS.

ACTION: Notice of suspension of applicability of certain requirements.

SUMMARY: This notice informs the public of the suspension of certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Haiti and who are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti. The Department of Homeland Security (DHS) is taking action to provide relief to these F–1 students so they may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while continuing to maintain their F–1 student status. F–1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a “full course of study” for the duration of their employment authorization, provided that they satisfy the minimum course load requirement described in this notice.

DATES: This notice is effective September 15, 2010 and will remain in effect until July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; MS 5600, U.S. Immigration and Customs Enforcement; 500 12th Street, SW., Washington, DC 20536–5600; (703) 603–

3400. This is not a toll-free number. Program information can be found at <http://www.ice.gov/sevis/>.

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising her authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment. F–1 students granted employment authorization by means of this notice will be deemed to be engaged in a “full course of study” for the duration of their employment authorization if they satisfy the minimum course load described in this notice. See 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 students whose country of citizenship is Haiti and who were lawfully present in the United States in F–1 nonimmigrant status on January 12, 2010 under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 students; (2) are currently maintaining F–1 status; and (3) are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti.

This notice applies both to undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students, as discussed in Question, “Does this notice apply to elementary school, middle school, and high school students in F–1 status?”

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to F–1 students whose country of citizenship is Haiti and who are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti. These students may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while continuing to maintain their F–1 student status.

Haiti has limited resources to cope with a natural disaster like this

earthquake, which was the strongest one to strike the island nation in 200 years. The country’s critical infrastructure was severely damaged, and many government offices, schools, businesses, and hospitals were completely destroyed. Millions of Haitians have been displaced from their homes and must depend on international aid organizations to receive basic necessities such as food and water.

Approximately 1,127 F–1 students whose country of citizenship is Haiti are enrolled in schools in the United States. Given the extent of the destruction and humanitarian challenges in Haiti, affected F–1 students whose primary means of financial support comes from family members in Haiti may now need to be exempted from the normal student employment requirements to be able to continue their studies in the United States. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement set forth in this notice?

Undergraduate students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester/quarter hours of instruction per academic term. Graduate-level F–1 students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester/quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v). In addition, F–1 students (both undergraduate and graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the F–1 student’s course of study is in a language study program. See 8 CFR 214.2(f)(6)(i)(G). Elementary school, middle school, and high school students must maintain “class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,” as required under 8 CFR 214.2(f)(6)(i)(E).

May Haitian F–1 students who already have on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. Haitian F–1 students who already have on-campus or off-campus employment authorization may benefit under this notice, which suspends

regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and the employment eligibility requirements under 8 CFR 214.2(f)(9) as specified in this notice. Such Haitian F-1 students may benefit without having to apply for a new Form I-766, Employment Authorization Document (EAD). To benefit from this notice, the student must request that his or her Designated School Official (DSO) enter the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I-20:

Approved for more than 20 hours per week of [DSO must insert "on-campus" or "off-campus," depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date, July 22, 2011, or the current EAD expiration date (if the student is currently working off campus), whichever date comes first].

Must the F-1 student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her full course of study?

No. F-1 students who are granted employment authorization under this notice will be deemed to be engaged in a "full course of study" for the duration of their employment authorization, provided that qualifying undergraduate level F-1 students remain registered for a minimum of six semester/quarter hours of instruction per academic term, and qualifying graduate level F-1 students remain registered for a minimum of three semester/quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Such students will not be required to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F-1 status.

Will F-2 dependents (spouse or minor children) of F-1 students covered by this notice be eligible to apply for employment authorization?

No. An F-2 spouse or minor child of an F-1 student is not authorized to work in the United States and, therefore, may not accept employment under the F-2 status. See 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to aliens who are granted an F-1 visa after this notice is published in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to those F-1 students whose country of citizenship is Haiti and who were lawfully present in the United States in F-1 nonimmigrant status on January 12, 2010 under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is Student and Exchange Visitor Program (SEVP) certified for enrollment of F-1 students; (2) are currently maintaining F-1 status; and (3) are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti.

F-1 students who do not meet these requirements do not qualify for the suspension of the applicability of the standard regulatory requirements, even if they are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti.

Does this notice apply to an F-1 student who departs the United States after this notice is published in the Federal Register and who needs to obtain a new F-1 visa before he or she may return to the United States to continue his or her educational programs?

Yes, provided that the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I-20. Subject to the specific terms of this notice, the normal rules for visa issuance (including those related to public charge and nonimmigrant intent) remain applicable to nonimmigrants that need to apply for a new F-1 visa in order to continue their educational programs in the United States.

Does this notice apply to elementary school, middle school, and high school students in F-1 status?

This notice does not reduce the required course load for elementary school, middle school, or high school students in F-1 status. Such students must maintain the minimum number of hours of class attendance per week prescribed by the school for normal progress toward graduation. See 8 CFR 214.2(f)(6)(i)(E).

Eligible F-1 students from Haiti enrolled in an elementary school, middle school, or high school do benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-

campus employment to 20 hours per week while school is in session. DHS notes, however, that the suspension of this requirement is solely for DHS purposes of determining valid F-1 status. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors. With regard to off-campus employment, elementary school, middle school, and high school students benefit from the suspension of the requirement that a student must have been in F-1 status for one full academic year in order to be eligible for off-campus employment and the requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session. With regard to on-campus employment, nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors. The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F-1 students—regardless of educational level—pursuant to the regulations at 8 CFR 214.2(f)(9)(i) and (f)(9)(ii).

On-Campus Employment Authorization

Will F-1 students who are granted on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For F-1 students covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F-1 student's on-campus employment to 20 hours per week while school is in session. A student whose country of citizenship is Haiti and who is experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti is authorized to work more than 20 hours per week while school is in session if his or her DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I-20 *Certificate of Eligibility for Nonimmigrant (F-1) Student*:

Approved for more than 20 hours per week of on-campus authorization and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date or July 22, 2011, whichever date comes first].

To obtain on-campus employment authorization, the student must demonstrate to his or her DSO that the employment is necessary to avoid severe economic hardship that is directly resulting from the earthquake in

Haiti. A student authorized by his or her DSO to engage in on-campus employment by means of this notice does not need to make any filing with U.S. Citizenship and Immigration Services (USCIS).

The standard rules permitting full-time work on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

Will F-1 students who are granted on-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F-1 nonimmigrant status?

Yes. F-1 students who are granted on-campus employment authorization under this notice will be deemed to be engaged in a "full course of study" for the purpose of maintaining their F-1 status for the duration of their on-campus employment if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F).

However, the authorization for reduced course load is solely for DHS purposes of determining valid F-1 status. Nothing in this notice mandates that a school allow a student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.¹

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For F-1 students covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F-1 status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F-1 student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study; and

(c) The requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session.

¹ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, Web site, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

Will F-1 students who are granted off-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F-1 nonimmigrant status?

Yes. F-1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a "full course of study" for purpose of maintaining their F-1 status for the duration of their employment authorization if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F-1 status. Nothing in this notice mandates that a school allow a student to take reduced course load if such reduced course load would not meet the school's minimum course load requirement.²

How may Haitian F-1 students obtain employment authorization for off-campus employment with a reduced course load under this notice?

F-1 students must file a Form I-765 *Application for Employment Authorization* with USCIS if they wish to apply for off-campus employment authorization based on severe economic hardship resulting from the January 12, 2010 earthquake in Haiti. Filing instructions are located at: <http://www.uscis.gov/i-765>. If an F-1 student has obtained an EAD as a result of applying for Temporary Protected Status (TPS) for Haiti or is in the process of seeking a TPS EAD, please see Question, "May Haitian F-1 students who already have on-campus or off-campus employment authorization benefit from this notice?" An F-1 student may use his or her TPS EAD to work, but in order to maintain F-1 status must comply with other requirements of the school's DSO as described.

Fee considerations. Submission of a Form I-765 currently requires payment of a \$340 fee. If the applicant is unable to pay the fee, he or she must submit a written affidavit or unsworn declaration requesting a waiver of the fee and including the statement: "I declare under penalty of perjury that the foregoing is true and correct." *See* <http://www.uscis.gov/feewaiver>. The submission must include an explanation of why he or she should be granted the

² Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, Web site or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

fee waiver and the reasons for his or her inability to pay. *See* 8 CFR 103.7(c).

Supporting documentation. An F-1 student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO at the school where the F-1 student is enrolled that this employment is necessary to avoid severe economic hardship and that the hardship is resulting from the January 12, 2010 earthquake in Haiti. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I-20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I-766 until [DSO must insert the program end date or July 22, 2011, whichever date comes first].

The student must then file the properly endorsed Form I-20 and Form I-765, according to the instructions for the Form I-765. The student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that a student be approved for Special Student Relief, the DSO certifies that:

(a) The student is in good academic standing as determined by the DSO;

(b) The student is a citizen of Haiti and is experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti, as documented on the Form I-20;

(c) The student is carrying a full course of study at the time of the request for employment authorization;

(d) The student will be registered for the duration of his or her authorized employment for a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(e) The off-campus employment is necessary to alleviate severe economic hardship to the individual caused by the January 12, 2010 earthquake in Haiti.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR

214.2(f)(9)(ii)(C), the student should:

(a) Ensure that the application package includes: (1) A completed Form I-765; (2) the required fee or properly

documented fee waiver request as defined in 8 CFR 103.7(c); and (3) a signed and dated copy of the student's Form I-20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase "SPECIAL STUDENT RELIEF." Failure to include this notation may result in significant processing delays. If USCIS approves the student's Form I-765, the USCIS official will send the student a Form I-766 *Employment Authorization Document (EAD)* as evidence of his or her employment authorization. The EAD will contain an expiration date that does not exceed the earlier of the student's program end date or July 22, 2011.

TPS Considerations

Can an F-1 student apply for TPS and for benefits under this notice at the same time?

Yes. An F-1 student who has not yet applied for TPS or for student relief under this notice has two options. Under the first option, the student may file the TPS application according to the instructions in the **Federal Register** Notice designating Haiti for TPS. *See* 75 FR 3476. All TPS applicants must file a Form I-821 *Application for Temporary Protected Status*, and Form I-765, regardless of whether they are seeking employment authorization under TPS. The fee (or a properly documented fee waiver request) for Form I-765 is required only if the applicant is seeking employment authorization under TPS. *See* 8 CFR 244.6. If the student files a TPS application and requests employment authorization under TPS, once the student receives the TPS-related EAD, the student may go to his/her DSO and ask the DSO to make the required entry in SEVIS, issue an updated Form I-20, as described in this notice, and note that the student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the student maintains the minimum course load described in this notice, does not otherwise violate his/her nonimmigrant status as provided under 8 CFR 214.1(g), and maintains his or her TPS, then the student maintains F-1 status and TPS concurrently. Under the second option, the student may apply for an EAD under student relief. In this instance, Form I-765 must be filed with the location specified in the filing instructions. At the same time, the student may file a separate TPS application, but must

submit the TPS filing according to the instructions provided in the **Federal Register** Notice designating Haiti for TPS. Because the student has already applied for employment authorization under student relief, the Form I-765 submitted as part of the TPS application is without fee. Again, the student will be able to maintain F-1 status and TPS.

When a student applies simultaneously for TPS status and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The student must maintain normal course load requirements for a full course of study unless or until he or she is granted employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a student to drop below 12 credit hours. Once approved for "severe economic hardship" employment authorization, the student may drop below 12 credit hours (with a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level). *See* 8 CFR 214.2(f)(6), 214.2(f)(5)(v), 214.2(f)(9)(i) and (ii).

If a student has been approved for employment authorization under TPS, how does he or she apply for authorization to take a reduced course load under this notice?

There is no further application process. The student only needs to demonstrate economic hardship caused by the January 12, 2010 earthquake in Haiti to his or her DSO and receive the DSO recommendation in SEVIS. *See* "supporting documentation," above. No other EAD will be issued.

Can a student who has been granted TPS, and has allowed his or her F-1 status to lapse, apply for reinstatement to F-1 student status?

Yes. Current regulations permit a student who falls out of student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). For example, this provision would apply to a student who worked on a TPS-related EAD or dropped his or her course load before publication of this notice, and therefore fell out of student status. The student must satisfy the criteria set forth in the student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until July 22, 2011 to a specific group of F-1 students whose country of citizenship is Haiti. During this period, DHS will continue to monitor the situation in Haiti. Should the special provisions authorized by this notice need to be modified or extended, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act

An F-1 student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO at the school where he or she is enrolled that this employment is necessary to avoid severe economic hardship. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is currently contained in the Student and Exchange Visitor and Information System (SEVIS) collection of information currently approved by OMB under OMB Control Number 1653-0038.

This notice also allows F-1 students whose country of citizenship is Haiti and who are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti, to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while continuing to maintain their F-1 student status.

To apply for work authorization an F-1 student must complete and submit currently approved Form I-765 according to the instructions on the form. The authority to collect the information contained on the current Form I-765, has previously been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (OMB Control No. 1615-0040). Although there will be a slight increase in the number of Form I-765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I-765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Janet Napolitano,
Secretary.

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