

Colleges Fight New Visa Policy For Foreign Students

By **Suzanne Monyak**

Law360 (October 23, 2018, 6:13 PM EDT) -- A group of higher education institutions, including Haverford College and The New School, challenged a recent Trump administration policy that could open up more international students to harsh immigration penalties, saying in a lawsuit filed in North Carolina federal court Tuesday that the policy change will hurt both the students and American universities.

The institutions — which include two private liberal arts colleges, a research university and a district of community colleges — slammed U.S. Citizenship and Immigration Services' new policy, effective Aug. 9, which changed the way the agency calculates the number of days a nonimmigrant foreign student has been present in the U.S without legal permission.

Under the new policy, USCIS will backdate the clock, tracking accrued days of unlawful presence to the date the student initially fell out of status rather than starting the clock at the later date that the agency formally concludes there has been a violation. After the student has been unlawfully present for 180 consecutive days, the student is barred from re-entering the U.S. for three years, and after being unlawfully present for a year, the student is barred from re-entry for a decade.

In their complaint, the institutions said the policy change has forced international students to drop out of school to avoid accruing time after their immigration status has lapsed, disrupting the students' education and depriving the schools of tuition money.

"The imposition of a re-entry bar on an international student or exchange visitor has a drastic effect on her life. It will preclude her from completing her degree program, deprive her of employment opportunities and exclude her from friends and family living in the United States," the complaint says. "It also imposes a financial harm on institutions in terms of lost tuition dollars and local communities in terms of foregone discretionary expenditures by bias holders."

In May, USCIS issued its memo announcing the upcoming change, saying anyone in the U.S. as a "nonimmigrant status" foreign student, foreign vocational student or foreign exchange visitor who falls out of legal immigration status — such as by failing to renew a visa or dropping out of school — will begin accruing unlawfully present time on the date the status lapses, which could be earlier than the date that the student is notified of the lapse.

The new policy applies to immigrants and their dependents here on F student visas, J exchange visitor visas, and M vocational student visas, the agency said. According to the lawsuit, there were 1.2 million

individuals in the U.S. on F or M visas and 210,000 individuals on J visas as of March 2018.

Under the previous policy, set in 1997 by the agency then known as U.S. Immigration and Naturalization Service, unlawful presence for foreign students and exchange visitors, whose visas last for the "duration of status" rather than until a clear expiration date, began running on the day USCIS found a violation or when an immigration judge ordered the applicant removed.

In Tuesday's lawsuit, the institutions accused USCIS and the U.S. Department of Homeland Security of violating the Administrative Procedure Act and infringing students' due process rights, saying the government had relied on inaccurate information and had not gone through the proper rulemaking process when promulgating the rule.

The institutions include Guilford College, Guilford College International Club, The New School, Foothill-De Anza Community College District and Haverford College.

The schools emphasized that foreign students on those visas — who are typically not eligible for federal financial aid money — contribute significantly to the "economic health of the thousands of colleges and universities" by paying tuition. They also said the policy could result in the removal of students who were "well-intentioned" but fell out of status accidentally, such as by working slightly more than the legal maximum of 20 hours per week to meet a deadline, by reducing their course load without the correct approval or even by making a typographical error.

"Many of these determinations rest on discretionary judgments by USCIS. Thus, it is impossible for an F, J, or M visa holder — or the institution of which they are a member — to know at the outset what conduct will render an individual out-of-status," the complaint says.

The lawsuit also noted that due to "delays in USCIS processing and immigration court backlogs," a student's immigration status may not be adjudicated until more than 180 days, or even more than a year, after the student fell out of status, leaving them no remedy to dodge the re-entry bar once they are formally found out-of-status.

The August "unlawful presence" policy comes amid several new immigration policy changes targeting foreign students and businesses seeking to hire them under the Trump administration, which has pledged to protect American workers and U.S. industry.

In April, USCIS updated its website to impose additional restrictions on foreign students studying science, technology, engineering or math in the U.S. to obtain temporary work authorization after graduation. In July, USCIS released a memo expanding the types of immigration cases that could be subject to removal proceedings.

Representatives for the institutions and for DHS did not immediately respond to requests for comment on Tuesday.

The institutions are represented by Paul W. Hughes, Michael B. Kimberly and Cory S. Menees of Mayer Brown LLP, and H. Ronald Klasko of Klasko Immigration Law Partners LLP.

Counsel information for the government was not immediately available on Tuesday.

The case is Guilford College et al. v. Nielsen et al., case number 1:18-cv-00891, in the U.S. District Court

for the Middle District of North Carolina.

--Additional reporting by Steven Trader and Nicole Narea. Editing by Stephen Berg.

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