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Updated Guidance on F-1, M-1 Student Intent to Depart and Residence Abroad Requirements

Legal Update

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By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

The Department of State (DOS) updated its Foreign Affairs Manual (FAM) on intent to depart and residence abroad requirements for F-1 and M-1 students. The guidance may also be useful for J-1 exchange visitors and Afghan scholars.

The guidance states that student visa applicants must possess a present intent to depart the United States at the conclusion of their approved activities, but that such intentions may be subject to, or even likely to, change and that this is not a sufficient reason to deny a visa. Further, the guidance notes, the present intent to depart does not imply a need to return to the country from which they hold a passport; it only means that they must intend to leave the United States upon completion of studies. A student can be considered as maintaining a residence abroad if he or she intends to return to reside with parents or guardians.

The guidance notes that students, who are typically young, are at a phase in life where they are not expected to necessarily have long-range plans or be able to fully explain what their plans are after they finish their studies. The guidance notes that the context of the residence abroad requirement for student visas inherently differs from the context for B visitor or other short-term visas: "It is natural that the student does not possess ties of property, employment and continuity of life typical of B visa applicants."