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SUBJECT: Students and Immigrant Intent
REF: (A) Section 101(A)(15)(F) and 9 FAM 41.61 (B) 04
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STATE 00180015 001.2 OF 003

1. Summary: This cable provides some guidance for consular officers in how to interpret the immigrant intent provisions when adjudicating student visa applications. Consular officers adjudicating student visa applications should evaluate the applicant's requirement to maintain a residence abroad in the context of the student's present circumstances; they should focus on the student applicant's immediate and near-term intent. Revised FAM notes follow. End summary.

2. Residence abroad requirement in general terms: As explained in ref (B), the immigrant intent requirement applies in only certain nonimmigrant visa classifications. Most of these visa classifications require the visa applicant to satisfactorily demonstrate that s/he possesses a residence abroad that s/he has no intention of abandoning. This residence abroad requirement is found in the B, F, J, M, O-2, P, and Q visa classifications.

3. The purpose of travel is always the controlling criterion for determining a proper visa classification. Each classification differs fundamentally in terms of activities permitted and time period contemplated in the United States. Student visa adjudication is made more complex by the fact that students typically stay in the U.S. longer than do many other non-immigrant visitors. In these circumstances, it is important to keep in mind that the applicant's intent is to be adjudicated based on present intent - not on contingencies of what might happen in the future, during a lengthy period of study in the United States.

4. Context of residence abroad for students: While the concept of "ties" is very useful in evaluating many non-

immigrant visa applicants, it is relatively less useful in assessing the present intent of a student. The typical student is young, without employment, without family dependents, and without substantial personal assets. Students may have only general rather than specific plans for the future. These personal circumstances differ greatly from those of persons usually qualifying for B-1's or P visas for example. The residence abroad requirement for a student should therefore be considered in a broader light, focusing on the student applicants' immediate intent. While students may not be able to demonstrate strong "ties", their typical youth often conveys a countervailing major advantage in establishing their bona fides: they don't necessarily have a long-range plan, and hence are relatively less likely to have formed an intent to abandon their homes.

5. Intended course of study: The fact that the alien plans on studying a subject for which there is no or little employment opportunity in his country of residence is not a basis for denying the visa; because circumstances may change, this fact should not be deemed a negative factor in adjudicating the case. Nor, on the other hand, is the fact that the country of residence can provide the equivalent quality courses in the same subject matter. The student has the right to choose where s/he will obtain an education if accepted by the school.

6. Visa renewal during course of study: Some students have to apply for new visas if they go home or travel during their period of study. Returning student applications should generally be reissued in the normal course of business, unless circumstances have changed significantly from the time of previous issuance. Students should be encouraged to travel home during their studies in order to maintain ties to their country of origin.. If students feel that they will encounter difficulties in seeking a new student visa or that a visa will not be issued to them so they can continue their studies, they may be less inclined to leave the United States during their studies and hence may distance themselves culturally from their homeland. Posts should facilitate the reissuance of student visas so that these students can travel freely back and forth between the homeland and the United States.

7. Student Visa Reminders:

A. Educational qualifications: The I-20 is evidence that STATE 00180015 002.2 OF 003 the school has accepted the applicant as a student. The choice of the subject matter is not determinative of the applicant's scholastic aptitude. Consular officers should

not go behind the I-20 to adjudicate the alien's qualifications as a student for that institution. If the consular officer has reason to believe that the applicant engaged in fraud or misrepresentation to garner acceptance into the school as laid out in 9 FAM 41.61 Note 8, then that information is an important factor to consider in determining if the applicant has a bona fide intent to engage in study in the United States. Verification of admission with the school would usually be required if you are considering applying INA 212(a)(6)(C).

B. Community colleges or lesser-known schools: All legitimate schools must be accorded the same weight under the law. The INA does not distinguish among schools qualifying for I-20 authorization based on size or recognition. There is no legal difference between community colleges, English language schools and four-year institutions. Applicants should be adjudicated on their bona fides as students regardless of institution of program of study. If you have reason to question the authenticity of the school contact either DHS or CA/VO/F/P.

8. Text of FAM Notes:

9 FAM 41.61 N5.1 Residence Abroad Required
(ct:visa-706; 02-17-2005)

The INA requires that the applicant possess a residence in a foreign country he or she has no intention of abandoning. The regulations require that the consular officer be satisfied that the alien intends to depart upon termination of student status. Consequently, the consular officer must be satisfied that the applicant, at the time of visa application:

- (1) Has a residence abroad;
- (2) Has no immediate intention of abandoning that residence; and
- (3) Intends to depart from the United States upon completion of the course of study.

9 FAM 41.61 N5.2 Context of Residence Abroad for Student Visas

(ct:visa-706; 02-17-2005)

The context of the residence abroad requirement for student visas inherently differs from the context for b visitor visas or other short-term visas. The statute clearly pre-supposes 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 single, unemployed, without property, and is at the stage in life of deciding and developing his or her future plans. This general condition is further accentuated in light of the student's proposed extended absence from his or her homeland. (see 9 FAM 41.11 n2.)

Nonetheless, the consular officer must be satisfied at the time of application for a visa that an alien possesses the present intent to depart the U.S. at the conclusion of his or her studies. That this intention is subject to change or even likely to change is not a sufficient reason to deny a visa.

9 FAM 41.61 N5.3 Relationship of Education or Training Sought to Existence of Ties Abroad
(ct:visa-706; 02-17-2005)

The fact that a student's proposed education or training would not appear to be useful in the homeland is not, in itself, a basis for refusing an f-1 or m-1 visa. This remains true if the applicant 's proposed course of study seems to be impractical. For example, if a person from a developing country may wish to study nuclear engineering simply because he enjoys it, he may no more be denied a visa because there is no market for a nuclear engineer's skills in his homeland than he may be denied a visa for the study of philosophy or greek simply because they do not lead to a specific vocation.

9 FAM 41.61 N5.4 Availability of Collateral Academic Education in the Applicant's Homeland
(ct:visa-706; 02-17-2005)

The fact that education or training similar to that which the applicant plans to undertake is apparently available in the home country is not in itself a basis for refusing

STATE 00180015 003.2 OF 003

a student visa. An applicant may legitimately seek to study in the United States for various reasons, including a higher standard of education or training. Furthermore, the desired education or training in the applicant's homeland may be only theoretically available; openings in local schools and institutions may be already filled or reserved for others.

9. Conclusion: Student visa applications must be adjudicated in the proper context, a long view. You, as Consular officers, must assess the residence abroad requirement focusing on whether the applicant intends at the time of applying for the visa to abandon his or her residence abroad. In evaluating this intent, relatively little weight can be given to the traditional "ties" that

are more useful in adjudicating applications for B visas. Please seek advisory assistance with the advisory opinions division if any questions arise.

10. Minimize considered.

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