COMMENTARY AND CORRESPONDENCE

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To the Editor:

In her recent article in *The Fletcher Forum,* Leslie Rowe exposed the unfortunate consequences of a proposed amendment to U.S. immigration law that would have restricted the rights of persons coming to this country on student visas. While agreeing with her criticism, I believe that Ms. Rowe's discussion of how the amendment would have changed current law needs to be clarified.

An alien cannot remain legally in the United States on a student visa (or any other nonimmigrant visa) after the visa expires, and a student visa is issued with an expiration date falling shortly after the student's graduation. If a foreign student wishes to remain in the country after graduation, he may be able to obtain an extension of the student visa (such as for a period of not more than one year to engage in practical training in his field of study not available in his home country), but generally he must adjust his visa status to a different classification, a process requiring him to show that he is eligible for the new visa classification.

If the former student intends eventually to return to his home country, he would seek a nonimmigrant visa. The nonimmigrant visas for which former students qualify most frequently are H-1 visas, available to aliens of distinguished merit and ability coming to the United States temporarily to perform services of an exceptional nature requiring such merit and ability, and H-3 visas, available to aliens coming to the United States temporarily as trainees. A student would often require a master's degree to qualify for the H-1 visa, and the H-1 and H-3 visas both would require an employer willing to hire the student. Other nonimmigrant visas for which former students might qualify immediately upon graduation are those available to diplomatic personnel, employees of international organizations, journalists or employees of companies based in the employee's home country and doing business in the United States ("treaty traders"). A former student employed overseas by an affiliate of a U.S. company in a managerial, executive or other specialized function would, after one year in such a position, be eligible to return to the United States on an L-1 visa as an intra-company transferee.

A former student who wishes to remain in the United States permanently would need to obtain an immigrant visa and permanent resident status. Unless the alien has been able to marry an American citizen, however, he would as a practical matter need an approved petition for classification as a "preference immigrant" before he could receive an immigrant visa. Although this is not a formal requirement, immigrant visas are subject to annual numerical limitations, and the waiting list is now so long that no nonpreference immigrant will obtain a visa in the foreseeable future. Assuming that the alien does not qualify for a preference on the basis of a family relationship, he would petition for classification as a third preference immigrant, a classification available to members of the professions and persons of outstanding ability in the sciences or the arts whose services in the professions, sciences or arts are sought by an employer in the United States. He could also apply for classification as a sixth preference immigrant, a classification available to aliens capable of performing skilled or unskilled labor for which a shortage of employable and willing persons exists in the United States. For either the third or sixth preference, the alien must have a job or a pending job offer in the United States, and, except for a few specialized occupations, the Department of Labor must certify in each case that the position cannot be filled by an American worker.

It is probably impractical for an alien to adjust his status from a student visa (or a tourist visa, for that matter) directly to an immigrant visa because of the need for a job or a pending job offer, the time required for the Department of Labor certification and approval of the preference petition, and a current backlog of about one year before visas are available to most persons classifed as sixth preference immigrants. Unless the alien is in the United States on a nonimmigrant visa that can be renewed as long as the alien remains employed (such as the H or L visas), a nonimmigrant visa would be likely to expire, and the alien would be required to leave the country before the immigrant visa could be obtained.

So much for current law. The proposed amendment deprecated by Ms. Rowe would have prohibited persons holding student visas from applying for an immigrant visa, permanent resident status, or the L or H nonimmigrant visas unless the person had resided and been physically present in the country of his nationality or last residence for an aggregate of at least two years following his departure from the United States (subject to the exceptions discussed by Ms. Rowe). The amendment would not prevent the holder of a student visa from obtaining nonimmigrant visas other than the L or H visas, but since it is one of the H visas for which a former student is likely to qualify, many international students entitled under present law to stay in the country could not do so if the amendment became law. The amendment would also prevent any former student, even those who

could still obtain nonimmigrant visas, from applying for an immigrant visa and permanent resident status without satisfying the two year residence and physical presence requirement.

Accordingly, one can readily agree with the unfavorable assessment of the amendment made by Ms. Rowe, as well as others. Senator Kennedy said on the Senate floor in opposition to the bill containing the amendment that "we are closing our doors to many who should be welcomed." The bill in question has expired without being passed by the House of Representatives; it is to be hoped that the provision amending the requirements for student visas will not reappear in proposals to reform immigration law.

— Patrick C. Reed

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