

2003

## U.S. Immigration Restrictions on Foreign Students after 9/11: Impact on Students from Mexico

Yvette Ramos Wade

---

### Recommended Citation

Yvette Ramos Wade, *U.S. Immigration Restrictions on Foreign Students after 9/11: Impact on Students from Mexico*, 9 LAW & BUS. REV. AM. 181 (2003)  
<https://scholar.smu.edu/lbra/vol9/iss1/10>

This Comment and Case Note is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

# U.S. IMMIGRATION RESTRICTIONS ON FOREIGN STUDENTS AFTER 9/11: IMPACT ON STUDENTS FROM MEXICO

*Yvette Ramos Wade\**

IN the thirteen months following the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, the U.S. government has made a significant shift in its national security and immigration policy.<sup>1</sup> Areas of international interest that had never been considered important are now being scrutinized under Homeland Security; one such area is the issue of foreign students and higher education.<sup>2</sup> In the days following the September 11 attacks, the nation faced grave concerns regarding the abuse of international student status. In response, President Bush issued a presidential directive on Homeland Security on October 30, 2001, entitled "Combating Terrorism Through Immigration Policies."<sup>3</sup> The directive provided, *inter alia*, initiatives for the development of an enhanced Immigration and Naturalization Service (INS) and customs enforcement, the creation of an inter-agency tracking program of foreign students who have received visas, and identified the need to negotiate with Mexico and Canada in efforts to "assure maximum possible compatibility of immigration, customs, and visa policies."<sup>4</sup> Shortly thereafter, the USA PATRIOT Act of 2001 was passed, addressing many of the same initiatives, including tightening rules on student visas and developing a common tracking database system to prevent aliens suspected of terrorism from entering the country.<sup>5</sup> The third major piece of legislation passed was the Enhanced Border Security and Visa Entry Reform Act of 2002, which mandates a full integration of databases and data collections on aliens. The resulting concerted efforts of various federal agencies

---

\* Yvette Ramos Wade is a 2004 J.D. Candidate at the Dedman School of Law, Southern Methodist University. Prior to attending law school, the author obtained a B.A. in Biology and a Masters in Clinical Gerontology, both from Baylor University. The author would like to give her deepest thanks to her family, and her husband, Deron L. Wade, for their unyielding love, support, and encouragement.

1. James H. Johnson, Jr., *United States Immigration Reform, Homeland Security, and Global Economic Competitiveness in the Aftermath of the September 11, 2001 Terrorist Attacks*, 27 N.C. J. INT'L L. & COM. REG. 419, 420 (2002).
2. Mark Krikorian, *Center for Immigration Studies Foreign Students Immigration Program*, FEDERAL NEWS SERVICE, June 25, 2002 (noting that had September 11 not happened, the foreign student tracking system would not exist).
3. Directive on Combating Terrorism Through Immigration Policies, 37 WKLY. COMP. PRES. DOC. 1570 (Oct. 29, 2001).
4. *Id.* at 1572.
5. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

have led the way for key INS regulations to address the many shortcomings in the system that were made painfully obvious by the terrorist attacks.<sup>6</sup>

### I. TIGHTENED RULES ON STUDENT VISAS

The INS's former student visa system has been heavily criticized since the September 11 terrorist attacks, after it was discovered that three of the hijackers entered or remained in the United States under student visas, including one who never arrived at the campus where he presumably was to study English.<sup>7</sup> Six months after the terrorist attacks, the INS came under scrutiny yet again. The Florida flight school that provided training to two hijackers was notified that the men had been approved for a change in visa status from visitors to students.<sup>8</sup> As a result, the Bush administration enacted stringent regulations for the issuance of education-related visas.<sup>9</sup> Although all international students will be impacted, students from Mexico will be most affected, given the number of full-time and part-time border commuter Mexican students enrolled in U.S. colleges and universities.<sup>10</sup>

Although the INS has refrained from modifying the guidelines as to who will be allowed to study in the United States, it has implemented new application procedures.<sup>11</sup> Consistent with the Immigration and Nationality Act, which governs the admission of individuals into the United States, Mexican students who plan to enter the United States to "pursue full-time academic or vocational studies" may be admitted as a non-immigrant in two categories: F-1 and M-1.<sup>12</sup> The F-1 category identifies academic students who will be studying in "colleges, universities, seminaries, conservatories, academic high schools, other academic institutions, and in language training."<sup>13</sup> The M-1 category identifies students who will be

6. *Immigration Service Implements Anti-Terrorism Practices: INS Official Describes New Procedures in Senate Subcommittee Testimony*, UNITED STATES DEP'T OF STATE INT'L INFO. PROGRAMS, available at <http://usinfo.state.gov/topical/global/immigration/02100902.htm> (Oct. 9, 2002).

7. Dan Eggen & Cheryl W. Thompson, *INS to Monitor Foreign Students: Ashcroft Reverses Stance on System*, WASH. POST, May 11, 2002, at A10.

8. *IG Finds 'Widespread Failure' in INS's Handling of Visa Adjudications, Notifications for Two 9/11 Terrorists*, 79 NO. 22 INTERPRETER RELEASES 824, May 24, 2002 [hereinafter *IG Finds*].

9. Anne E. Kornblut, *Bush Orders Closer Scrutiny of Foreign Students*, BOSTON GLOBE, Oct. 30, 2001, at A12.

10. *INS Interim Rule Allows Part-Time Commuter Study in F, M Non-immigrant Categories for Border Students*, 79 NO. 35 INTERPRETER RELEASES 1352, Sept. 9, 2002 (noting part-time border commuter student enrollment at El Paso Community College is approximately 2,400, generating \$700,000 in tuition; the University of Texas at Brownsville English language program reported a loss of \$150,000 due to a 50 percent drop in enrollment in its program).

11. *INS Online: How Do I Become An Academic Student in the United States?*, at <http://www.ins.usdoj.gov/graphics/howdoi/academic.htm> (last visited Feb. 9, 2003) [hereinafter *INS Online*].

12. *Id.*

13. *Id.*

studying in vocational institutes.<sup>14</sup> Regardless of their category, Mexican students enrolling in new courses of study after May 22, 2002 are limited to full-time status.<sup>15</sup> Until the INS delineates a more permanent solution, part-time Mexican students enrolled in U.S. institutes prior to May 22, 2002 will be allowed to continue their studies.<sup>16</sup>

The initial steps in the application process to obtain a student visa have largely remained the same, however, the INS has made several changes to tighten control in the latter stages. First, a Mexican student must apply and be accepted for admission by an U.S. INS-approved college or university.<sup>17</sup> The institute is required to enroll him or her full-time in order for the student to qualify for a student visa.<sup>18</sup> The school then issues the student an INS Form I-20 A-B/ID (certificate of eligibility for non-immigrant F-1 student status).<sup>19</sup> Next, the student must take the INS Form I-20 to a local U.S. consulate, where a consular officer reviews the application and interviews the student before granting approval for a student visa.<sup>20</sup> As mandated by the Enhanced Border Security and Visa Entry Reform Act of 2002, a new regulation effective immediately, any alien seeking an issuance of a visa as an F or M non-immigrant is required to provide his or her current address; the name(s) and address(es) of spouse, children, parents and siblings; the name(s) of contacts in the country of residence who can verify information concerning the alien; and any previous work history, including name(s) and address(es) of employers.<sup>21</sup> Moreover, beginning September 11, 2003, consular officers will not be authorized to issue F or M non-immigrant visas until they receive electronic confirmation of a student's acceptance from the accepting academic or vocational institution.<sup>22</sup> If the visa is granted, the consulate upon issuance must notify the INS, who then notifies the institution of the student's visa approval.<sup>23</sup> Furthermore, the institution must verify that the student has completed enrollment within thirty days of the deadline for class registration so that other schools that also accepted the student will be notified of the student's enrollment.<sup>24</sup> Alternatively, if the student fails to appear on campus or disappears shortly after arrival, the school must notify the INS, and law enforcement agents will track down the

---

14. *Id.*

15. *INS Extends Deadline for POEs to Comply with Part-Time Commuter Student Policy*, 79 NO. 34 INTERPRETER RELEASES 1281, Aug. 26, 2002.

16. *Id.*

17. *INS Online*, *supra* note 11.

18. Krikorian, *supra* note 2.

19. *Id.*

20. *Id.*

21. Enhanced Border Security and Visa Reform Act of 2002, § 501(b), Pub.L. No. 107-173, § 501(b), 116 Stat. 543 (2002).

22. *See* § 501(c).

23. *See* § 501(c).

24. *See* § 501(c).

student.<sup>25</sup>

Prior INS procedures allowed individuals who had initially entered the United States under a visitor visa to begin the application process for a student visa after they were in the country. Currently, INS procedures require aliens who apply for a change in status to be approved for a student visa before they are eligible to enroll in classes.<sup>26</sup> In order to comply with the new procedures, the INS will be required to improve and maintain the processing time for change of status applications, which historically has not occurred.<sup>27</sup>

Additionally, the INS plans to significantly modify issuance procedures of social security numbers to aliens. Foreign students will have to wait to apply for social security numbers until they are physically in the country.<sup>28</sup> Moreover, because approval for a social security number is now subject to INS verification, the waiting period to receive social security numbers will be extended from about one week, to anywhere from two to ten weeks.<sup>29</sup> The Social Security Administration will now be required to forward applications from international students to the INS for verification; in the past no such verification was required.<sup>30</sup> The processing delays will inevitably add to the pressures of adjustment for incoming Mexican students. It is also likely to prevent them from working and earning money while in graduate school.

## II. STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS)

According to Open Doors 2001, an annual report on international education published by the Institute of International Education with support from the State Department's Bureau of Educational and Cultural Affairs, there were approximately 550,000 foreign students enrolled in U.S. colleges and universities on September 11, 2001.<sup>31</sup> Moreover, the INS acknowledged it "could not verify the whereabouts of many" of those students.<sup>32</sup>

---

25. Christopher Newton, *INS Starts Student Tracking Web Site*, ASSOCIATED PRESS (July 3, 2002), available at <http://www.govtech.net/news/news.phtml?docid=2002.07.03-3030000000015580> (last visited Feb. 9, 2003).

26. *IG Finds*, *supra* note 8, at 825.

27. *Id.*

28. *Social Security Administration Modifies Procedures for Alien SSN Applications*, *F-1 Documentation*, 79 NO. 34 INTERPRETER RELEASES 1278, Aug. 26, 2002 [hereinafter *Social Security Administration*].

29. Leah Jin, *Foreign UC-Berkeley Students Face Delays for Campus Jobs*, DAILY CALIFORNIAN, Aug. 6, 2002, available at LEXIS, News and Business Library, UWIRE File.

30. *Social Security Administration*, *supra* note 28, at 1279.

31. Open Doors on the Web, Foreign Student and Total UNITED STATES Enrollment, at [http://www.iienetwork.org/file\\_depot/0-1000000/0-10000/1710/folder/10125/Total%20International%20Student%20Enrollment1.htm](http://www.iienetwork.org/file_depot/0-1000000/0-10000/1710/folder/10125/Total%20International%20Student%20Enrollment1.htm) (last visited Feb. 9, 2003) [hereinafter Open Doors on the Web 1].

32. Associated Press, *INS Imposes New Restrictions for Students* (Apr. 8, 2002), at <http://www.worldlawdirect.com/article/1350> (last visited Feb. 9, 2003).

Statistics show that international student enrollment has consistently grown from 34,232 in 1955 to 547,867 in 2001, and increased by 6.4 percent in the past year alone.<sup>33</sup> The countries of origin of international students are widespread: Asian students comprise 51 percent with 302,058 students; followed by 80,584 from Europe; 63,634 from Latin and South America; 36,858 from the Middle East; 34,217 from Africa; and 25,888 from North America.<sup>34</sup> Notably, enrollment of students from Central America decreased 5 percent to 16,764, with students from Mexico seeing a slight increase in their enrollment of 10,670.<sup>35</sup> Due to the sheer numbers alone, the INS's efforts at keeping tabs on foreign students have been dysfunctional for some time.<sup>36</sup> However, the INS has published a new set of interim rules and has initiated an internet-based tracking system to enhance the ability to track and monitor foreign and exchange student programs.<sup>37</sup>

The internet-based tracking system is known as the Student and Exchange Visitor Information System (SEVIS).<sup>38</sup> The main purpose of SEVIS is to collect information not previously monitored by the INS. SEVIS will track several student groups, including F and M categories, from the time the students receive student visa approval until they graduate or leave the institute.<sup>39</sup> Once SEVIS is fully functional, it will enable the INS to remain in contact and exchange electronic information with the participating INS-approved institutes in efforts to maintain information that reflects accurate changes to a student's visa status, such as a change in address or program of study.<sup>40</sup>

The data collected by SEVIS is essentially the same information that has historically been required by law but never actively enforced. The new internet-based system is expected to enhance every institute's ability to comply with the statutory requirements.<sup>41</sup> The information required to be collected is delineated in three main bodies of legislation. Section 641(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires electronic reporting of the student's name, current address, visa classification, date of visa issuance, academic status, and any academic disciplinary actions due to criminal convictions.<sup>42</sup> Section 416 of the USA PATRIOT Act mandates reporting of the date and port of

---

33. Open Doors on the Web 1, *supra* note 31.

34. Open Doors on the Web, Foreign Student Totals by Place of Origin, (1999/99 & 2000/01), at [http://www.iienetwork.org/file\\_depot/0-10000000/0-10000/1710/folder/10125/Leading%20Places%20of%20Origin\\_Foreign%20Students1.htm](http://www.iienetwork.org/file_depot/0-10000000/0-10000/1710/folder/10125/Leading%20Places%20of%20Origin_Foreign%20Students1.htm) (last visited Feb. 9, 2003).

35. *Id.*

36. *IG Finds, supra* note 8, at 824.

37. *Immigration Service Implements Anti-Terrorism Practices, supra* note 6.

38. Immigration and Naturalization Services SEVP—Frequently Asked Questions: Student and Exchange Visitor Program, at <http://www.ins.usdoj.gov/graphics/services/tembenefits/sevpqa.htm> (last visited Feb. 9, 2003).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

entry.<sup>43</sup> INS regulations at 8 CFR 214.3(g) require reporting of the name, place and date of birth, country of citizenship, address, academic status (full-time or part-time), date of commencement of studies, degree program or field of study, practical training (and dates), termination date and reasons for termination, I-20 application and approved form, and the number of credits completed per year.<sup>44</sup> In addition, schools will be required to report when international students change their field of study to a sensitive subject which may “provide useful information to terrorists—such as chemistry or nuclear physics.”<sup>45</sup>

INS launched SEVIS on the official website on July 1, 2002. The system, however, does not become mandatory until January 30, 2003.<sup>46</sup> INS-approved institutes must become SEVIS-certified by this date or lose eligibility to admit international students.<sup>47</sup> Upon certification, the institutes will be issued user names and passwords in order to access and update student information.<sup>48</sup> Likewise, consular officers will be able to access SEVIS to confirm student acceptance to U.S. institutes and verify student eligibility for student visitor status.<sup>49</sup>

Eventually SEVIS will be available in real-time over the internet.<sup>50</sup>

### III. EFFECTS ON MEXICO

A significant reduction in the number of student visas issued to Mexican citizens will “prove detrimental” to both Mexico and the United States.<sup>51</sup> Experts predict the impact of limiting Mexican students will have “a profound social, economical and pedagogical impact on U.S. educational institutions, academics, and small and large enterprises that depend upon the spending power of Mexican students.”<sup>52</sup> Likewise, the modernization of Mexico would be adversely affected given the strong commercial ties U.S. high-tech companies have to Mexican entities.<sup>53</sup> Moreover, the restrictions on education-related visas essentially limit Mexican companies who normally would send employees to the United States for specialized educational training in technological areas.<sup>54</sup> In-

---

43. *Id.*

44. *Id.*

45. Newton, *supra* note 25.

46. *State Dept. Instructs on SEVIS, New Student and Exchange Visitor Forms*, 79 NO. 27 INTERPRETER RELEASES 1018, July 8, 2002.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Hale E. Sheppard, *Salvaging Trade, Economic and Political Relations with Mexico in the Aftermath of the Terrorist Attacks: A Call for a Reevaluation of U.S. Law and Policy*, 20 B.U. INT'L L.J. 33, 64 (2002).

52. Press Release, Council on Hemispheric Affairs, Fox May Not Like What He Hears Today in Washington, But It Is A Dramatically Changed Ballgame (Oct. 4, 2001), at [http://coha.org/Press\\_Release/01-18-fox\\_in\\_washington.htm](http://coha.org/Press_Release/01-18-fox_in_washington.htm) (last visited Feb. 1, 2003).

53. Sheppard, *supra* note 51, at 64.

54. *Id.*

deed, Mexican companies may find it increasingly difficult to comply with the full-time enrollment requirement, as well as restrictions to sensitive areas of study.

In the wake of September 11, the U.S. government has made a significant shift in its policy on national security and international students. In addition to complying with admission application procedures mandated by each academic or vocational institute, foreign students are required to comply with legislatively mandated application procedures in order to ensure admission into the United States. Although the new procedures have broad implications for all foreign students, they will have a tremendous impact on Mexican students given the geographic, economic, and political closeness between the United States and Mexico. In 2000 and 2001, Mexico was the largest country of origin for legal immigrants (206,426) with India at a distant second (70,290).<sup>55</sup> Consequently, Mexican students who choose to study in the United States will have to devote significantly more time and effort than has been required in the past in order to ensure compliance with INS requirements as well as complying with institution deadlines.

---

55. *INS Releases FY 2002 Legal Immigration Figures*, 79 No. 36 INTERPRETER RELEASES 1403, Sept. 16, 2002.

