

Navigating the *NAFSA Manual*: Foreign Students and Scholars Regulations

MOST OF THE BOOKS ON IMMIGRATION ATTORNEYS' SHELVES are published by the American Immigration Lawyers Association (AILA). They cover a wide range of topics and are updated by AILA experts—with proceeds supporting all of AILA's good works. However, there are two visa categories that are not thoroughly covered in AILA publications—the student and exchange visas. This is because foreign student advisers, not immigration attorneys, handle the bulk of student and exchange visa processing since this area falls under university-designated programs.

The advisers that handle student and exchange visas at colleges, universities, and high schools belong to the National Association of Foreign Student Advisers (NAFSA). NAFSA runs immigration workshops and continuing education conferences and provides reference books and Internet resources. The core volume on any adviser's desk is the *NAFSA Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars* (NAFSA: Association of International Educators; \$275 (member), \$395 (nonmember)), simply known as the "manual."

Top 10 Reasons to Own the Manual

The manual is the most authoritative source available on F-1 and M-1 visas, SEVIS, and J-1 visas. NAFSA staff and advisers at top research and academic institutions in the country prepare and regularly review the manual. In fact, quite a few of the chapters in AILA's *Immigration Options for Academics and Researchers* were written by NAFSA experts.

While attorneys are not usually involved directly with F and J visas, there are 10 reasons why purchasing the manual as a supplement to any immigration law library is most advantageous:

Reason No. 1

Regardless of an attorney's focus in immigration law, one will likely run across



F and J visa holders. There are more than one million students and exchange visitors currently in the United States and countless more who have previously held F and J status. Fs and Js may get married, have and adopt children, want to discuss other family members coming to the United States, seek post-graduation jobs, get into trouble with the police, be eligible for asylum, etc., thereby placing them in the office of an immigration law practitioner.

Reason No. 2

In order to evaluate other immigration

options, attorneys need to understand whether an F or J visa holder has, for example, maintained status, worked without authorization, is eligible for work authorization, is properly registered on SEVIS, or can obtain an extension of status. The SEVIS section is particularly interesting because attorneys do not have access to the SEVIS system. SEVIS is covered in great detail for university advisers—with useful screenshots showing how to use and update the SEVIS system with any changes to a student's status.

Reason No. 3

The manual is a wonderful training and reference tool for nonattorneys in the office. It is recommended for paralegals conducting legal research and provides plain English explanations of intricate immigration policies and procedures. The sections on H-1B visas and PERM are excellent—a must-read for paralegals starting work in these areas. There is no other single, plain English, high-quality source of immigration information on the variety of subjects covered.

As an aside, NAFSA also publishes (for \$36) a wall chart of nonimmigrant visa classifications—last updated 2005—that is a handy reference for nonattorneys or client waiting areas. The chart lists eligibility to work or study for principals and dependents. →

[The manual] is a comprehensive, well-designed, and affordable reference on visa issues relating to academic institutions.

Reason No. 4

While the primary focus of the manual involves the F, J, and H visas and green cards for university personnel, there are solid overviews of other visas, citizenship, and basic immigration history and regulation. I-9 and the Immigration Reform Control Act of 1986 procedures also are covered in straightforward, detailed language.

Reason No. 5

Many topics affect both NAFSA and AILA members in daily practice. For example, NAFSA has published timely and accurate practice advisories on procedures for correcting an I-94 card and concurrent filing. These are later incorporated into the manual. The manual does not give detailed, legal advice and tends to only identify grey areas rather than weigh in on them; however, the topics are covered uniformly, accurately, thoughtfully, and in great detail.

Reason No. 6

One manual highlight is a newly added section in the H-1B chapter that synthesizes the doctrine of dual intent—confusing for many students who come off their F status and are concerned about traveling using their H-1B. This section contains useful guidance on advising students when to travel and what questions to anticipate at the consular office.

Reason No. 7

The manual can be extremely useful in explaining complex issues. Graduating students should review the section on the H-1B cap, while human resources directors should pay attention to a section in the PERM guidance that explains the difference between advertising to test the labor market in compliance with strict Department of Labor requirements versus regular advertising. The reviewers have even used the manual on occasion

to make a point to an immigration officer who was familiar with NAFSA. In all these cases, the manual presented information in a clear-cut manner without sacrificing accuracy.

Moreover, the manual is essential for an attorney discussing any issue with a foreign student or scholar adviser—citing a section from the manual that supports one's position will be very persuasive.

Reason No. 8

The manual and its companion website provide many primary and secondary source documents. This is not a substitute for a full immigration law library,

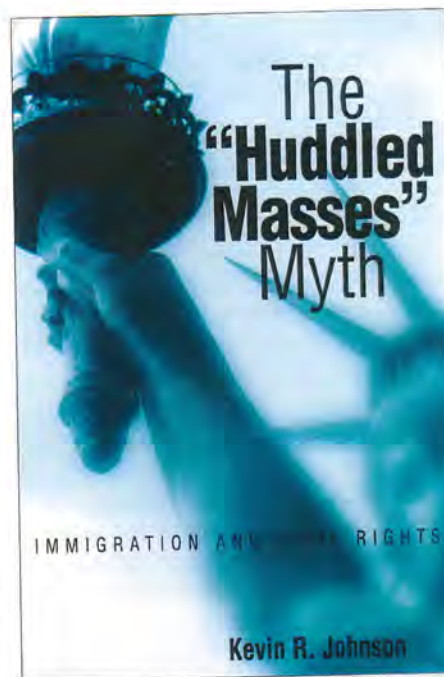
but for a small practice, NAFSA provides many essential legal resources at a relatively low cost.

Reason No. 9

The manual is absolutely essential if one's practice overlaps with academic or research institutions. Attorneys who process J visa waivers and visas for college and university professors and researchers, must understand the current state of F and J visas. A recent example of regulatory changes is the new five-year time limit for J-1 scholars. This is a complicated rule and may be crucial to evaluating your client's near-term options for employment.

Immigration Laws' Biases Toward The Huddled Masses

We were considering writing a review in this issue of *The "Huddled Masses" Myth: Immigration and Civil Rights* (Temple University Press; \$21.95, paperback), by Prof. Kevin R. Johnson at the University of California at Davis. While the topic is highly relevant to AILA members, this book (published in 2004) is now somewhat dated. It has a post-9/11 focus on extensive security delays and civil rights issues that have been treated in detail elsewhere—to a certain extent mitigated by newer Department of Homeland Security decisions. The book describes the intersection of civil rights law and immigration law. The main conclusion—backed by numerous examples—is that immigration law lags substantially behind domestic civil rights law. While there are numerous anti-discrimination statutes and regulations for U.S. nationals, the immigration system is still seen as biased toward people from Africa or South America, gays and lesbians, the disabled, and other groups.



Unlike past editions, the latest version has a handy table of contents within each section that details every subject within that tab.

Reason No. 10

Finally, the manual addresses the institutional issues of immigration advising and the boundary of unlawful practice of law. The institutional topics section—especially section 3.4, “Risk Management”—is packed with good tips on how nonprofits and universities can avoid tricky legal issues by developing consistent and updated immigration policies and procedures. For example, consider the following questions and develop a policy plan:

- Who is legally authorized to sign F and J documents for the institution?
- Do those people know and understand the regulations they administer?
- Did someone change the hours, title, job department, job duties, or salary for an alien employee without appropriate notification to or approval from Department of Homeland Security (DHS)?
- How is your institution represented to government agencies?
- Is the description consistent across all agreements and petitions filed with DHS?

Additional Features

Cross-referenced from the manual are two companion research tools that come as part of its annual subscription. First, the subscription allows access to the companion website that has source documents organized into “practice toolboxes”—separate sections of primary and secondary source documents on particular issues. Second, NAFSA sends a concise e-mail newsletter called Immigration Adviser Quarterly that discusses key developments and cites new documents posted to the website.


Current updates are accessible online and include:

- Update to Bi-specialization Filing Procedures
- New U.S. Citizenship and Immigration Services Guidance on Permanence for EB-1 Researchers
- H-1B Cap Exemptions for Work at Qualifying Institutions
- Updated List of Special Registration Ports of Departure

Unlike past editions, the latest version has a handy table of contents within each section that details every subject within that tab. This feature allows for a quick reference within the tab one desires to use. The manual can get unwieldy at times, so this feature is great for finding information expeditiously.

During a demonstration of the manual at a NAFSA conference

several years ago, there was a slide entitled, “I’d like to develop powerful biceps; how can the Adviser’s Manual help me?” It is certainly a very large loose-leaf binder—measuring several inches thick. However, the manual is much more than a useful piece of exercise equipment. It is a comprehensive, well-designed, and affordable reference on visa issues relating to academic institutions.

At some point in 2007, the manual will be made available completely in electronic form, although the desk version will hopefully still be available. For more information on the manual, see www.nafsa.org/publications or call 1-866-538-1927. 

Dan Berger is a named partner and **Gabby Templet** is a paralegal at Curran & Berger in Northampton, MA. The authors are grateful to Elizabeth Goss of Tocci, Goss & Lee in Boston for her insights on this review.

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