

Title 22 CFR Part 62 (Exchange Visitors) > #16-45 Reinstatement to valid program status

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#16-45 Reinstatement to valid program status

62.45(a) Definitions

For purpose of this section—You means the Responsible Officer or Alternate Responsible Officer;

Exchange visitor means the person who enters the United States on a J visa in order to participate in an exchange program designated by the Secretary of State of the Department of State.

Fails or failed maintain valid program status means the status of an exchange visitor who has completed, concluded, ceased, interrupted, graduated from, or otherwise terminated the exchange visitor's participation in the exchange program, or who remains in the United States beyond the end date on the exchange visitor's current Form DS-2019.

Unauthorized employment means any employment not properly authorized by you or by the Attorney General, i.e., the Immigration and Naturalization Service, prior to commencement of employment. Unauthorized employment does not include activities that are normally approvable, as described in paragraph (c)(3) of this section.

We, our, or us means the office of Exchange Visitor Program Services of the Department of State.

62.45(b)

Who is authorized to correct minor or technical infractions of the Exchange Visitor Program regulations?

62.45(b)(1) If the exchange visitor committed a technical or minor infraction of the regulations, you are authorized to correct the exchange visitor's records with respect to such technical or minor infractions of the regulations in this part. Your correction of such an infraction(s) returns the exchange visitor to the status quo ante, i.e., it is as if the infraction never occurred.

62.45(b)(2) You may only correct the exchange visitor's record with respect to a technical or minor infraction of the regulations in this part if the exchange visitor is pursuing or intending to pursue the exchange visitor's original program objective.

62.45(b)(3) You may not correct the exchange visitor's records with respect to a technical or minor infraction of the regulations in this part if the exchange visitor has willfully failed to maintain insurance coverage during the period for which the record is being corrected; if the exchange visitor has engaged in unauthorized employment during that period, as defined in paragraph (a) of this section, or if the exchange visitor was involuntarily suspended or terminated from his or her program during the period.

62.45(b)(4) If the exchange visitor has failed to maintain valid program status because of a substantive violation of the regulations in this part, you must apply to us for reinstatement.

62.45(c)

62.45(c) What violations or infractions of the regulations in this part do we consider to be technical or minor ones, and how do you correct the record?

We consider the following to be examples of technical or minor infractions which you are authorized to correct:

62.45(c)(1) Failure to extend the Form DS-2019 in a timely manner (i.e., prior to the end date on the current Form DS-2019) due to inadvertence or neglect on your part or on the part of the exchange visitor.

62.45(c)(2) Failure on the part of the exchange visitor to conclude a transfer of program prior to the end date on the current Form DS-2019 due to administrative delay or oversight, inadvertence or neglect on your part or on the part of the exchange visitor.

62.45(c)(3) Failure to engage in a normally approvable and appropriate activity, Example, a lecture, consultation, or other type of payment for engaging in a normally approvable and appropriate activity.



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other activity appropriate to the category which is provided by a professor, research scholar, short-term scholar or specialist without prior approval or an amended Form DS-2019 issued prior to the occurrence of the activity.

62.45(c)(4) You correct the record status quo ante by issuing a Form DS-2019 or by writing an authorization letter to reflect the continuity in the program or the permission to engage in the activity that a timely issued document would have reflected.

62.45(c)(4)(i) Forms DS-2019 should be:

62.45(c)(4)(i)(A) Issued to show continued authorized stay without interruption;

62.45(c)(4)(i)(B) Marked in the "purpose" box with the appropriate purpose (i.e., extension, transfer, etc.) and with the additional notation of "correct the record" typed in;

62.45(c)(4)(i)(C) Dated as of the date the Form was actually executed; and,

62.45(c)(4)(i)(D) Submitted to the Department of State in the same way as any other notification.

62.45(c)(4)(ii) Letters or other authorization documents should be:

62.45(c)(4)(ii)(A) Issued according to the regulations in this part appropriate to the category and the activity;

62.45(c)(4)(ii)(B) Marked or annotated to show "correct the record,"

62.45(c)(4)(ii)(C) Dated as of the date the letter or document was actually executed; and,

62.45(c)(4)(ii)(D) Attached to the exchange visitor's Form DS-2019 and/or retained in the sponsor's file as required by the regulations in this part for that particular type of letter or document.

62.45(d)

62.45(d) How do you determine if an infraction, other than those examples listed above is a technical or minor infraction?

It is impossible to list every example of a technical or minor infraction. To guide you in making a determination, you are to examine the following criteria:

62.45(d)(1) Regardless of the reason, has the exchange visitor failed to maintain valid program status for more than 120 calendar days after the end date on the current Form DS-2019?

62.45(d)(2) Has the exchange visitor, by his or her actions, failed to maintain, at all relevant times, his or her original program objective?

62.45(d)(3) Has the exchange visitor willfully failed to comply with our insurance coverage requirements (§ 62.14)?

62.45(d)(4) Has the exchange visitor engaged in unauthorized employment, as that term is defined in paragraph (a) of this section?

62.45(d)(5) Has the exchange visitor category been involuntarily suspended or terminated from his or her program?

62.45(d)(6) Has an exchange visitor in the student category failed to maintain a full course of study (as defined in § 62.2) without prior consultation with you and the exchange visitor's academic advisor?

62.45(d)(7) Has the exchange visitor failed to pay the fee mandated by Public Law 104-208 (the "CIPRIS" fee)?

62.45(d)(8) If the answer to any of the above questions is "yes," then the infraction is not a technical or minor one and you are not authorized to reinstate the exchange visitor to valid program status.

62.45(e)

62.45(e) Which violations or infractions do we consider to be substantive ones requiring you to apply to us for reinstatement?

The following are substantive violations or infractions of the regulations in this part by the exchange visitor which require you to apply to us for reinstatement to valid program status:

62.45(e)(1) Failure to maintain valid program status for more than 120 days after the end date on the current Form DS-2019;

62.45(e)(2) If a student, failure to maintain a full course of study (as defined in § 62.2) without prior consultation with you and the exchange visitor's academic advisor.

62.45(f)

62.45(f) Which, if any, violations of the regulations in this part or other conditions preclude reinstatement and will result in a denial if application is made?

We will not consider requests for reinstatement (nor should you) when an exchange visitor has:

62.45(f)(1) Knowingly or willfully failed to obtain or maintain the required health insurance (§ 62.14) at all times while in the United States;

62.45(f)(2) Engaged in unauthorized employment, as that term is defined in paragraph (a) of this section;

62.45(f)(3) Been suspended or terminated from the most recent exchange visitor program;

62.45(f)(4) Failed to maintain valid program status for more than 270 calendar days;

62.45(f)(5) Received a favorable recommendation from the Department of State on an application for waiver of section 212(e) of the Immigration and Nationality Act [8 U.S.C. 1182(e)]; or,

62.45(f)(6) Failed to pay the fee mandated by Public Law 104-208 (the "CIPRIS" fee.)

62.45(g)

62.45(g) What if you cannot determine which category (technical, substantive, or non-reinstatable) the violation or infraction falls within?

If you cannot determine which category the violation or condition falls within, then you must, on behalf of the exchange visitor, apply to us for reinstatement.

62.45(h)

If you determine that the exchange visitor's violation of the regulations in this part is a substantive one, how do you apply for a reinstatement to valid program status?

62.45(h)(1) If you determine that the violation of the regulations in this part is a substantive one, and that the exchange visitor has failed to maintain valid program status for 120 days or less, you must apply to us for reinstatement of the exchange visitor to valid program status. Your application must include:

62.45(h)(1)(i) All copies of the exchange visitor's Forms DS-2019 issued to date;

62.45(h)(1)(ii) A new, completed Form DS-2019, showing in Block 3 the date of the period for which reinstatement is sought, i.e., the new program end date;

62.45(h)(1)(iii) A copy of the receipt showing that the Public Law 104-208 fee has been paid; and,

62.45(h)(1)(iv) A written statement (and documentary information supporting such statement):

62.45(h)(1)(iv)(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the original exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

62.45(h)(1)(iv)(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; or,

62.45(h)(1)(iv)(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

62.45(h)(2) If you determine that the violation of the regulations is a substantive one, and that the exchange visitor has failed to maintain valid program status for more than 120 days, then you must apply to us for reinstatement of the exchange visitor to valid program status. Your application must include:

62.45(h)(2)(i) Copies of all the exchange visitor's Forms DS-2019 issued to date;

62.45(h)(2)(ii) A new, completed Form DS-2019, showing in Block 3 the date for which reinstatement is sought, i.e., the new program end date;

62.45(h)(2)(iii) A copy of the receipt showing that the Pub. L. 104-208 fee has been paid; and,

62.45(h)(2)(iv) A written statement (together with documentary evidence supporting such statement):

62.45(h)(2)(iv)(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

62.45(h)(2)(iv)(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond

the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; and,
62.45(h)(2)(iv)(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

62.45(i)

How will we notify you of our decision on your request for reinstatement?

62.45(i)(1) If we deny your request for reinstatement, we will notify you by letter.

62.45(i)(2) If we approve your request for reinstatement, we will notify you:

62.45(i)(2)(i) By stamping Box 6 on the new Form DS-2019 to show that reinstatement was granted, effective as of the date on which the application for reinstatement was received by the Exchange Visitor Program Services office; and

62.45(i)(2)(ii) By returning the new Form DS-2019 for the exchange visitor.

62.45(j)

How long will it take us to act on your request for reinstatement?

We will act on your request for reinstatement within forty-five days from the date on which we receive the request and supporting documentation.

62.45(k) Who is **62.45(b)**

Are you required to notify us each time that you correct a record?

No special notification is necessary. Submission of the notification copy of Form DS-2019 to the Department of State serves as notice that a record has been corrected. Following the regulations in this part in issuing a letter or document serves as correction in the sponsor's file for those items not normally sent to the Department of State under existing notification procedures.

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