

JUL 21 2006



Transportation
Security
Administration

INFORMATION

MEMORANDUM FOR: Mike Restovich *mjr*
Assistant Administrator
Security Operations

FROM: Robert Rottman *RR*
Acting General Manager for General Aviation
Transportation Sector Network Management

SUBJECT: Alien Flight Student Program/Visa Issue

Purpose

This document will serve as information and clarification on the Alien Flight Training Program and rule. Recent misunderstandings and misinformation regarding the suitability of immigrations documents and visas has resulted in confusion and misinterpretations of the rule by the flight training industry and TSA representatives.

Background

On September 20, 2004, TSA published the interim final rule (IFR) establishing the Alien Flight Student Program (AFSP) (69 Federal Register 56324, codified at 49 C.F.R. Part 1552). The IFR requires FAA-regulated flight schools to notify TSA when a foreign student requests flight training, and requires the student to submit to TSA identifying information, including his or her fingerprints, prior to beginning flight training. Subsequently, TSA uses this information to conduct a security threat assessment (STA), on the student in order to determine whether the student poses a threat to aviation or national security.

In conducting the STA, TSA works closely with other Federal agencies including the Federal Bureau of Investigation (FBI), the Bureau of Customs and Immigration Service (USCIS), and the Bureau of Immigration and Customs Enforcement (ICE), Department of State (DOS), and Student and Exchange Visitors Information System (SEVIS).

As part of the supporting documentation used to vet candidates, TSA may examine a student's visa. Typically visas are not reviewed unless additional derogatory information is otherwise obtained. TSA queries ICE for an immigration status check on all candidates with possible derogatory information. As part of the immigration status check, ICE reviews visas for validity (i.e. not expired, revoked, etc.) and not

appropriateness (i.e. B-1, M-1, F-1). ICE will then relay its findings to TSA for appropriate action, and this may result in denial of a candidate's flight training. TSA takes these actions solely at the advice of ICE-- the agency responsible for enforcement of visa violations. TSA does not create visa policy, nor does it enforce visas. All actions taken with respect to visa violations are done so on the advice of ICE.

TSA, which does not have the regulatory authority or the expertise to make decisions on the suitability of visas, works with the responsible immigration agencies and departments (ICE and DOS), to determine if candidates have the correct visa for the appropriate purpose. However, to date the information received from the various agencies has been conflicting and ambiguous and has led to confusion and inconsistent application.

Currently DOS and ICE appear to have conflicting views on the appropriateness of B visas for flight training. Department of State, which has the responsibility for development of visa policy, contends that a B visa is appropriate for flight training. However, ICE, which enforces visa requirements, has asserted that B visas are not appropriate for flight training. Regardless of the type of immigration documents a flight training candidate possesses, all foreign flight training candidates seeking to obtain those FAA airman certificates and ratings as outlined in the rule must undergo an STA.

Discussion

To resolve this situation TSA, has requested clarification of visa requirements from DHS HQ. DHS Policy has taken the lead to develop guidance and coordinate with ICE, DOS, and other involved agencies. It is envisioned that the guidance materials will clearly discern the proper visas for various types of flight training. Based on the forgoing, TSA representatives having security inspection responsibility and oversight authority for flight training providers will adhere to performing those inspection duties outlined within the PARIS prompts for the respective regulated entity and other related TSA inspection guidance material and directives, and will abstain from making visa appropriate or validity determinations until further notice, as appropriate.

Once a definitive decision is made regarding the appropriate visas for flight training purposes, TSA will ensure that flight schools, ASI's, and other involved parties are informed. TSA will also revise its vetting and inspection process to accurately reflect the correct visa requirements.

In addition, the Office of General Aviation, which oversees the AFT program, is conducting flight school inspections to ensure that flight training providers are aware of, understand and are in compliance with the regulatory requirements of 49 CFR 1552. In addition, the Office is providing training for ASI's to ensure field units are able to conduct outreach and inspection visits at flight schools within their geographic areas of responsibility.