

# Mobility: immigration alert

September 2017

## United States

### Summary and Analysis of the Field Adjudicators Manual (FAM) Update by the U.S. Department of State (DOS)

#### Executive summary

On September 1, 2017, the Department of State (DOS) updated the Foreign Affairs Manual (FAM) to provide US consular officers with new guidance around the term “misrepresentation” as it relates to individuals in the US “who conduct themselves in a manner inconsistent with representations they made to consular officers concerning their intentions at the time of visa application or to the Department of Homeland Security when applying for admission or for an immigration benefit.”

The relevant updated section establishes a presumption that any activity taken in the US within 90 days of entry that may be seen as inconsistent with the representations made to the Consular Officer for admission may be viewed as a willful misrepresentation. The implication of such a determination could be a bar to readmission.

#### Summary points

- ▶ This new section imposes a “90-day rule” that conduct performed within 90 days of admission that violates or is otherwise inconsistent with an alien’s nonimmigrant status may be seen as inconsistent with the representations made to the Consular Officer for admission. Such activities that would constitute a violation include, but are not limited to:
    - ▶ Engaging in unauthorized employment
    - ▶ Enrolling in a course of academic study, if such study is not authorized for that nonimmigrant classification (e.g., Tourist or Business Visitor status)
    - ▶ Marrying a US Citizen or Permanent Resident if admitted in a status that does not simultaneously allow an immigrant intent such as B-1/2 (Business Visitor/Tourist) and F-1 (Student) status
  - ▶ After 90 Days: if an alien violates or engages in conduct inconsistent with his or her nonimmigrant status more than 90 days after entry into the United States, no presumption of willful misrepresentation arises.
  - ▶ The burden of proof falls on the individual to establish that his or her true intent at the time of application for the visa was consistent with that visa type.
- ▶ The updated FAM has replaced the prior “30/60 day rule.”
  - ▶ The 30/60 day rule can be summarized as follows:
    - ▶ If an alien engages in conduct that is inconsistent with his or her immigration status, within 30 days of entry, the government can presume the person misrepresented his or her intention in seeking a visa or admission.
    - ▶ If the act occurs more than 30 days but less than 60 days after entry, no presumption of misrepresentation arises. However, if facts show the reasonable belief that intent was misrepresented, then the alien must present countervailing evidence.
    - ▶ If the act occurs more than 60 days after admission into the United States, there is generally no basis for a misrepresentation or inadmissibility finding.
  - ▶ The United States Citizenship and Immigration Services (USCIS) Adjudicator’s Field Manual has not been updated to be consistent with the new FAM guidance.



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### Impact and next steps

Foreign nationals who enter the US through a category that does not allow them dual intent (i.e., holding nonimmigrant and immigrant intent at the same time) and apply to adjust to Legal Permanent Resident status (i.e., file a green card application) less than 90 days from the last date of entry into the US can be found to be engaging in conduct that violates or is otherwise inconsistent with their nonimmigrant status. This may subject them to an inadmissibility finding. A finding of misrepresentation or fraud can result in a lifetime bar to entering the US. Regardless of whether such an extreme conclusion is reached in any given case, we anticipate that the DOS's revisions to the FAM will result in greater scrutiny for immigrant visa applications and any subsequent filings.

We encourage you to stay connected to your EY Law LLP legal advisor for additional information regarding any proposed or implemented reforms issued by the DOS or USCIS. We are monitoring any new developments that come about from this update to the FAM.

### How we can help

Those who believe they may be affected by this notice should contact one of our US immigration professionals to discuss in greater detail the effects of these new provisions.

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