

[Return to the USDOJ/OIG Home Page](#)
[Return to the Table of Contents](#)

The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States

May 20, 2002

Office of the Inspector General

CHAPTER TWO BACKGROUND

This chapter provides background on the organizational structure of the INS, basic information on the visa system, how students are admitted into the United States, and how nonimmigrants in the United States can change their status to students.

I. Organizational Structure of the INS

The INS is currently organized into three management components - Headquarters, three regions, and 33 districts in the United States.² The districts are referred to collectively as "the field."

The districts are managed by a District Director, a Deputy District Director, and several Assistant District Directors. The districts are divided into various divisions such as Investigations, Inspections, Management, and Examinations (or Adjudications). Each division is led by an Assistant District Director.³

The processing of nonimmigrants who arrive at points designated as legal places through which to enter the country - known as ports of entry - is handled by INS immigration inspectors who are stationed at airports, seaports, and highways throughout the United States. A district's Inspections Division is responsible for overseeing the inspectors within the district.

The INS also operates five regional service centers that process many types of applications formerly handled in the districts. The five service centers are the California Service Center, the Nebraska Service Center, the Texas Service Center, the Vermont Service Center, and the Missouri Service Center. Requests for change of status (form I-539 and the accompanying I-20) - that is, the applications that Atta and Alshehhi filed with the INS - are handled by INS staff in four of the five service centers. The adjudication of the applications is handled by Center Adjudications Officers. Each of the service centers is headed by a Service Center Director.

The INS is headed by a Commissioner and a Deputy Commissioner. At all times relevant to this report, INS Headquarters, apart from the Commissioner's immediate staff,⁴ was divided into four major components, each overseen by an Executive Associate Commissioner: Programs, Field Operations, Policy and Planning, and Management. Each of the four Executive Associate Commissioners reported to the Deputy Commissioner who, in turn, reported to the Commissioner.

Of the four components (called "Offices"), the Office of Field Operations is most significantly involved in the day-to-day operations of the Field and has responsibility for implementing policies. Within the Office of Field Operations, the Enforcement Division is responsible for INS's investigative operations, the Immigration Services Division is responsible for operations in the service centers and adjudicative functions in the district offices, and the Inspections Division is responsible for the inspections process and operations at the ports of entry. The Service Center Directors report through a chain of command to senior managers in the Immigration Services Division.

At the time of the events at issue in this review, the Office of Programs was responsible for policy development and integration of both enforcement and adjudications programs.⁵ The Office of Programs was divided into substantive areas, such as adjudications, inspections, and investigations, with each branch led by

an Assistant Commissioner. Within the Adjudications Branch, the Business and Trade Section handled policy issues concerning student visas and change of status issues.⁶

An organizational chart reflecting the INS structure, as it existed in the summer of 2001, is located on the next page.

II. Visitor Visas

Atta and Alshehhi initially entered the country after obtaining B-1/B-2 visitor visas from a United States consulate abroad and later applied for a change of status to become students once they had already entered the country. In this section, we provide a brief description of the visitor visa.

A. Entrance of nonimmigrants into the United States

The Immigration and Nationality Act (INA) provides that aliens may be admitted to the United States as nonimmigrants (that is, aliens who do not intend to permanently reside in the United States), for "such time and under such conditions as the Attorney General may by regulations prescribe." 8 U.S.C. § 1184(a)(1). Federal regulations provide that every nonimmigrant must present at the time of entry "a valid passport and a valid visa unless either or both documents have been waived."⁷ 8 CFR § 214.1(a)(3). Federal regulations also require that nonimmigrants must depart the United States at the expiration of their authorized period of admission or upon abandonment of their authorized nonimmigrant status. 8 CFR § 214.1(a)(3).

B. Description of visitor visa classifications

The INA defines a visitor as:

an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

["Immigration and Naturalization Service Relevant Positions in Headquarters as of July 2001" organization chart not available electronically.]

8 USC § 1101(a)(15)(B). Visitors, or **the "B" classification of nonimmigrants, are divided between visitors entering for business purposes,** who are given a B-1 designation, and visitors entering for pleasure, who are given a B-2 designation. 8 CFR § 214.1(a)(1)(i) and (ii). The U.S. Department of State issues visas to foreigners outside the United States. The visitor visa is typically issued as a "B-1/B-2" visa, in other words, the visa covers both business and pleasure categories. The INS then designates the entry as either B-1 or B-2 once the alien states his or her purpose at a port of entry and is approved for admission.

The B-1 "business visitor" visa classification allows admission of an alien for a broad range of activities beyond commercial enterprises. Some of these include: aliens employed abroad traveling to the United States for a training program; aliens coming to install, service, or repair machinery at a United States site; alien students at a foreign medical school coming to take an elective clerkship; aliens coming temporarily to attend an executive seminar; alien members of a recognized religious denomination coming temporarily and solely to do missionary work on behalf of the denomination; certain camp counselors and counselors in training; and participants in competitions for prize money. See INS Operations Instructions 214.2(b)⁸; 8 CFR § 214.2(b).

The B-2 "pleasure" visa classification also includes several broad categories: aliens coming for tourism; aliens coming for health-related activities; aliens participating in conventions, conferences, or convocations of fraternal, social, or service organizations; aliens coming primarily for tourism but who will also engage in a short course of study; or aliens coming to attend courses for recreational purposes. See INS Inspector's Field Manual § 15.4(b)(2)(B).

C. Length of stay permitted by the visitor visa

1. **Period of validity of the visa**

The period of validity for a nonimmigrant visa is the period during which the alien may use the visa in applying for admission to the United States. This period is determined by the State Department when the visa is issued. The period of time that the alien is authorized to stay in the United States on a particular entry is determined by the INS inspector at the port of entry. The period of visa validity has no relation to the period of time that the inspector may authorize the alien to stay in the United States.

All United States nonimmigrant visas are limited to a maximum period of validity of 10 years. The period of validity for particular visas is based primarily on reciprocity: the State Department tries to accord the same treatment on a reciprocal basis that a foreign country accords to nationals of the United States.

Visas generally permit multiple entries, meaning that they may be used by the alien for unlimited entries into the United States for the period of admission determined by the INS for each entry. However, consular officers may limit the number of entries or limit the admissions to specified ports of entries. This is based on such factors as the alien's financial situation and the stated purpose of entry.

2. **Length of admission under the B-1/B-2 classification**

The standard B-2 admission is for six months.⁹ 8 CFR § 214.2(b)(2); see also, INS Operations Instruction 214.2(b). Although B-2 admissions may be granted for up to a maximum of one year, INS policy provides that inspectors require aliens to demonstrate a significant reason for an admission period longer than six months, such as an extended course of medical treatment. 8 CFR § 214.2(b)(1).

While B-1 business visitors also may be admitted for a maximum period of one year, the INS inspectors at the ports we visited told the OIG that they limit the length of stay of an alien with a B-1 visa to the time needed to accomplish the stated purpose of the alien's visit, plus a few days or weeks in the event that the business purpose takes slightly longer than expected. The INS Operations Instructions state that B-1 visitors shall be admitted only for the period of time that is fair and reasonable for completion of the purpose of the trip.

III. **Foreign Students**

Foreign nationals also may be admitted to the United States as students. Student status may be conferred on individuals studying full time at academic institutions, which include language schools, or at vocational schools. Foreign students in the United States at academic institutions or language schools are designated as "F-1" students; vocational students are designated as "M-1" students.¹⁰ Flight schools are considered by the INS to be vocational schools.¹¹

If an alien intends to enter the United States as a full-time student, the alien must obtain an F-1 or M-1 visa from the State Department at a consulate outside the United States. The student visa process is described more fully in Chapter Six.

Aliens possessing B-1/B-2 visitor visas may change their status to that of a student while in the United States. 8 USC § 1258. To change their status, the aliens must file INS form I-539, Application to Extend/Change Nonimmigrant Status, as well as the INS form I-20, the Certificate of Eligibility for Nonimmigrant Student Status. The I-20 form includes information about the school and the student's proposed course of study, including the dates of the course of study. These forms are sent to an INS service center for processing. Once the INS adjudicates the case and approves it, a copy of the I-20 is sent to the student and eventually a copy is sent to the school.

Applicants are required to file the I-539 prior to the expiration of their current authorized status. 8 CFR § 248.1(b). However, the applicant may start school before filing an I-539.¹² If the applicant files the I-539 before his or her current status expires and the I-539 form is still pending with the INS at the time the applicant's current status expires, the applicant is still legally entitled to be in the United States.¹³ 8 USC § 1182(a)(9)(B).

Foreign students are permitted to stay in the United States for different lengths of time, depending on their status and course of study. Academic, or F-1, students are admitted for what is called "duration of status." This means that there is no specific end date; the duration of status lasts as long as the student is "pursuing a full course of study." The federal regulations state "[t]he student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies." Once the student completes his or her studies, the student is given "60 days to prepare for departure from the United States." 8 CFR §214.2(f)(5)(j). Vocational students, or M-1 students, are authorized to be admitted "for the period of time necessary to complete the course of study ... plus thirty days within which to depart from the United States or for one year, whichever is less." 8 CFR § 214.2(m)(5).

Student visas are not issued with expiration dates. Rather, the inspector determines the length of stay at the POE based on the information on the I-20 and writes on the I-20 either "duration of status" if the student is an academic student or the beginning and end dates of the course if the student is a vocational student. If the student acquires student status through the I-539 process, the adjudicator fills in the length of stay on the I-20.

Normally, foreign students with student visas are permitted to leave the country and re-enter provided that they present the inspector with the student copy of the I-20 and it has been signed by an authorized school representative. Foreign students who have acquired student status through the I-539 process retain that status only while in the United States. A change of status is not a visa. Accordingly, if foreign students who have acquired student status through the I-539 process leave the United States and want to re-enter to continue their course of study, they must obtain a student visa at a consulate in their country of residence to re-enter.

Footnotes

2. The INS has three foreign district offices in Bangkok, Mexico City, and Rome, as well as several other overseas offices.
3. The three INS regions serve as intermediary managers of the districts - the Eastern Regional Office, the Central Regional Office, and the Western Regional Office. Each regional office is led by a Regional Director and a Deputy Regional Director. Each regional office is also divided into divisions that are led by an Assistant Regional Director.
4. The Commissioner's immediate staff includes the General Counsel and the Directors of the Office of Internal Audit and the Office of Congressional and Public Affairs.
5. The INS has proposed to move the policy functions of the Office of Programs to other offices within the INS. The policy functions for investigations, inspections, and detention and removal have been placed under the Office of Field Operations. The policy functions for adjudications have been placed under the Office of Policy and Planning.
6. The Office of Policy and Planning develops and coordinates long-range planning activities, as opposed to the more immediate matters that fell under the jurisdiction of the Office of Programs. The Executive Associate Commissioner for Policy and Planning is also responsible for advising the Commissioner on other issues that cross program lines or have inter-agency implications. The Office of Management is responsible for all administrative issues including financial, human resource, and information resource matters.
7. Waiver issues are discussed in Chapter Three, Section III B 2, of this report.
8. The INS's Operations Instructions provide guidance and interpretations of the regulations for INS employees and also provide additional information concerning the INS's policies and procedures.
9. The INS is proposing to change the presumptive length of admission for a B-1/ B-2 visa to 30 days. See Chapter Seven of this report for further discussion of this issue.
10. The academic student is defined as a "bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States." The vocational student is defined as "an alien having a residence in a foreign country which he has no

intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States." 8 USC § 1101(a)(15)(f) and (m). A "full course of studies" is defined separately for academic and vocational students. For vocational students, a "full course of studies" is defined as at least 12 semester hours if the school is a community college or junior college, 12 hours per week if it is a postsecondary vocational or business school, 18 clock hours of attendance a week if the dominant part of the course consists of classroom instruction in a vocational school, and 22 clock hours of attendance a week if the dominant part of the course of study consists of "shop or laboratory work." 8 CFR § 214.2(m)(9). For academic students, the hours required for a "full course of studies" depend on the type of program (e.g., postgraduate, undergraduate, language school) that the student is taking. 8 CFR § 214.2(f)(6). Students who do not meet these hourly requirements do not qualify for an M-1 or F-1 visa. However, they can be admitted under a B-1/B-2 visa if the inspector determines that their course of study is incidental to their primary purpose of pleasure or for a business related purpose.

11. In Chapter Six of this report, we discuss general requirements in the foreign student program, such as the requirement that schools be certified by the INS in order to accept foreign students and a school's obligation to notify the INS if a student is no longer enrolled in the school.
12. The INS has proposed legislation to require nonimmigrants to complete the change of status process before they are permitted to enroll in school. We discuss this proposed change in Chapter Seven of this report.
13. We discuss the change of status process in more detail in Chapter Four of this report.