Episode XX – Your F-1 Visa: An Interview with Immigration Specialist Kathleen Gasparian

Brian Mitchell: Welcome to Grad-post! I'm your host, Brian S. Mitchell and we're here to talk about life before, during, and after graduate school, and whether an advanced degree is right for you. I'll draw upon my experiences as a graduate dean and research mentor, as well as my network of students, colleagues, and experts to bring you the most complete information on graduate education that I can.

My guest today is Kathleen Gasparian, founding partner of Gasparian Spivey Immigration in New Orleans. She serves on the Board for the New Orleans Chapter of the Federal Bar Association, the Louisiana Immigration Working Group, Mess Arts, and as an Adjunct Professor of Immigration Law at Loyola University, New Orleans where she obtained her undergraduate and law degrees. She has been recognized by <u>Gambit</u>, <u>New Orleans Magazine</u>, <u>Super Lawyers</u>, and <u>City Business</u> for her expertise as an immigration attorney.

Kathleen, welcome to Grad-post!!!

Kathleen Gasparian: Great Brian, thank you so much for having me.

Brian Mitchell: My pleasure. So, thank you for being here. I spent this past fall discussing how to prepare an application for graduate school, and now, with the deadlines mostly passed, I thought we could talk a little bit about the immigration process for those international students receiving offers of admission to US graduate schools, law schools, and medical schools. Let's start with some basics.

Kathleen Gasparian: The very basics of immigration begins with an idea, right, that when people are coming to the US they are coming as non-immigrants or immigrants. So, non-immigrant means I'm coming with a temporary visa; I'm coming to do something that's going to last for a temporary time. You can't just come. You have to have a reason for coming, and the common ways that people are coming to attend graduate school in the United States is on an F-1 visa or a J-1 visa. So, F-1 is going to be your most common. This is what we're going to see for most graduate programs. J-1s are what you're going to likely see if you're coming to do a medical residency program, and J-1s have their own different rules and own different requirements. So, I think just focusing predominantly on F-1 is a great idea.

F-1s are the study visa. When you talk about a student visa or study visa, this is what we mean. Usually, the process is sort of a multi-step process. So, you get accepted to your school program. Your first really key piece — your key people that you need to know, the key place to go — is going to be the international office of your graduate school. Some places call it the office of International Students — OISS - one of those acronyms. This office is in charge of the immigration paperwork for international students. They're going to start by issuing a form called an I-20. This form is generated through a program called SEVIS. So, S-E-V-I-S. So, SEVIS is the program, the database, that keeps track of who's coming to the US on an F-1 visa and what they're doing once they get here. So, your database records are really important. So, the school starts the process. They issue the paperwork from the database called the I-20, and you may need to give the school additional information for that document like financial information. How are you paying for school? How are you paying for room and board? They issue that document to you, and then, as an international student, if you are not from Canada, if you're from anywhere else you are going to then with that paperwork schedule an interview at a US embassy, usually in your home country or the country where you are legally residing to obtain an F-1 visa.

So you start off, you fill out a form called the DS -60, and it's all the places you've lived, all the places you've worked. They ask for things like your social media identifiers. It feels like a very laborious form, which it is, but it's also really really important that you fill it out very accurately, because any mistakes or

misrepresentations can be something that haunt you for the rest of your life. So, you fill out the application, submit it, pay a small fee —couple 100 bucks at the most right now — and then schedule an appointment to go to the US embassy.

At the embassy, they look at, you know, they're looking at: "Do you have your documents in order? And they're also looking really importantly at two big issues in student visas. They're looking to see, does the student have a plan to go back home? And does that officer really think you are going to study and do the things you say you're going to do? If all goes well, they issue a visa sticker in your passport, like a little, you know, it's you got your photo and information on it, and you use that visa, and then the paperwork from the school, the I-20 to enter the US. There can be additional fees at the embassy depending on the country you're from. But that's sort of it. What we worry about is, how long does it take to get the interview? Right now, F-1 visas are processing really quickly at embassies. You can often get an appointment within a week or so. In the worst times, though, it can take 6 months to get an appointment with the embassy. So, we always want to plan. The sooner you can get started the less likely you are to run into issues.

Brian Mitchell: Okay! So that's great background information. You've talked a little bit about the timing. You know, an offer of admission may come anywhere from today to sometimes as late as March, or even later. You said it can take up to 6 months, and you gave the great advice of, you know, make sure you start right away. But is there like an expedited process if people are running short on time?

Kathleen Gasparian: Things like getting your appointment expedited will really depend very much on the individual situation. What country are they from? What field are they? What kind of background checks need to get done? It also really is going to depend about the overall attitude of that embassy and the overall attitude of the administration, right, the presidential administration. Things that happen outside of the US can easily be influenced by the president and any sort of executive branch order. So, we do worry about delay. But the way expedites work are you log in, you fill out the form, you schedule an appointment, and if the appointment is so far in the future, like you're going to miss your start date, then you go through an expedite process with the embassy.

Will the embassy consider it to be a reason for an expedite? That really depends. At that point, if you're doing an expedite that is the time that that things like a letter from your department can make a difference. In just a regular application, often people hear rumors about. Oh, if I have a letter from here or there, I'm more likely to be approved. That doesn't really make ... that's not really going to do it.

Oftentimes, when those offer letters are coming so late, we do want to be strategizing about, is it possible to do a semester completely remote from you know the home country? Or, is it possible to work with the university to delay the start date for a semester and roll it? And those are things that schools do all the time. It's not out of the ordinary to sort of delay the start date.

One of the first things I had talked about is when you go to the embassy, right, is what the student has to prove at the embassy, and I cannot underestimate the importance of what's called non-immigrant intent. You'll also hear it called 214b, because that's the section of the law that the embassies are talking about. And basically the law says, the United States presumes or assumes that anybody applying for a temporary visa really wants to stay in the US forever. And so, when looking at student visa applicants, the embassy official really wants to see that there is a tie to the home country or a plan to go back home.

That can be really difficult, for you know, students to show those things. So, it is about in discussing your application with the officer — in an interview that may last five minutes if we're lucky, right, they don't take very long — convincing the officer that you've thought through your program and you have a plan to

go back home. So, it's always good to be able to talk about what you're going to do with your degree, right? When I have my degree, this is how I'm going to use it. This is where you know where I want to go with it.

It's also good to know the school you're going to believe it or not. What part of the United States is the school in? What's the weather like there? Why did you pick that school? The more that the Embassy officer realizes that you are serious about study, the easier that interaction is going to be.

Brian Mitchell: What about countries that don't have a formal Embassy with the United States, or formal diplomatic relationship? And a related question, I guess, is, even if you have that, do you have to go to the Embassy in your home country? Can you go somewhere else?

Kathleen Gasparian: That's a great question. So, because there's this underlying presumption - the 214b, right, immigrant intent - when we are talking about student visas and other kinds of visas that are, you know, that have that requirement - like tourist visas, J visas - we always always will say, go to the embassy in your home country. And in fact, embassies outside of your home country may not take you for things like the student visa, because so much of the assessment is about the ties to the home country. So, the embassy official is looking at, sort of very local things, right? They may know the college you went to, or the high school you went to, or the neighborhood you live in, or you know the background of your family, right? Not all countries are giant like the United States. We're talking about populations of like the State of Alabama, and so usually, students are recommended to process in their home country. If you were legally residing in another country, you could also process there.

What if there's no embassy for me to go to? So, good examples would be Russia, or like Iran? The Department of State always has a policy about where people go when there's no embassy for them. And it varies by country to country. Russians were like at one point going to Belarus. There were sometimes processing in Poland. Sometime, you know, there's certain embassies that are located in countries where people don't have to have visas to go there, or can easily get visas. And so that's often where they'll process. But it's all very findable on the wonderful tool of the internet and the Department of State website, which is travel.state.gov. So, it's a great resource to find where you should go.

Brian Mitchell: Okay, travel.state.gov.

Kathleen Gasparian: That's right.

Brian Mitchell: I guess, speaking of timing, then, if you are in the situation where you have to go outside of the country to do the embassy interview, you have to factor that into your timing, because that can extend the time and increase cost as well, because you have to travel there, right?

Kathleen Gasparian: That's right, and you can under the current procedures - and I should note, you know, we're talking about this in late 2024 - under the current procedures you can ask for an appointment, go to the embassy and get your visa issued - the visa sticker issued - up to a year before your anticipated start date. However, the visa sticker isn't going to start until 30 days before the start of your program. So you can get it a year ahead, but you can only come in within that timeframe right before the start of your program. Definitely, there is no disadvantage for starting the process early.

Obviously, you're also dependent upon the school, and when the school does paperwork and everything else. So, when you are coming from a country that's hard to process from, international student advisors are often very familiar with this process, and which countries have delays and are hard to work with, and can help sort of facilitate, like, I said, like getting your start date delayed, getting start date with the University delayed, getting new documents issued to support that.

Brian Mitchell: And how long does that F-1 visa last? How long is it good for? Do you have to go through this process every year?

Kathleen Gasparian: So that's a great question, so, and there's no simple answer. We - the United States - we have agreements with all of the different countries in the world. The agreements with those countries impact how long the visa sticker in your passport is good for, and as well as our political relations with that country. Some countries, you may be able to get a visa sticker that is good for 5 years and multiple entries. Some countries you may be able to get a visa sticker that's good for 30 days and one entry.

But the important thing to remember is the visa sticker is like your ticket to enter the US. So, I would say, like, if you think about it like going to a rock concert. You show up at the concert, and you have your ticket to get into the arena. to get into the concert hall. That's going to be the visa sticker in your passport.

But once you enter the United States, the sticker in your passport doesn't really matter anymore. What's going to matter now is your backstage pass. What is the pass that you're given once you enter is going to say where you get to go, how long you get to be here, and what you get to do on it? Do you get to work? Do you get to study? Do you get to do different things? So, you use your visa sticker to show up at the airport right? And then the officer at the airport admits you. There's no guarantee that the people, that the Security Guards, are going to let you in. So, you get your visa sticker, and that's the embassy saying we think this person qualifies to be a student. But when you show up at the airport, the guards may say "we don't think this person qualifies to be a student." So, the embassy is making an assessment. The officers at the border are making an assessment about does everything look like this person's coming to study? Does everything look legit? So if you're showing up in the middle of the semester, even if you have all the right paperwork, the officer at the border may be thinking something's pretty fishy, so it's important to remember that that's a separate assessment.

And you're given what's called an I-94. And then that piece of paper which you actually have to go online to download, combined with your I-20 and your active record in that SEVIS database, those items together are your permission to be in the US. And as long as you are keeping up with the rules of F-1: going to class, doing what you're supposed to do, not working beyond the rules of your F and maintaining your student status, then you are in status, and it doesn't matter if the sticker in your passport expires.

Brian Mitchell: Okay. So you mentioned a lot of options there, for example, traveling within the United States. You're in the rock concert now, so to speak. Other than backstage, can you go anywhere? Can you travel within the Continental United States?

Kathleen Gasparian: Absolutely. You can even go to Hawaii and Alaska, but you may want to be careful, because if the plane breaks down over Canada, right, that could be a problem. But no, really, truly like once you, once you've entered the US as a student, like, I said, it's at I-94, and the I-20, that show that you are in status, and so you're free to travel inside the US.

Even if your visa sticker expires, in certain situations F-1 students may be able to travel to Mexico and Canada and some islands without having to get a new visa sticker, just on their I-20 and record. But you want to be really careful because some countries are not allowed to participate in that program. So yeah, but once you're here, it's pretty easy. Your school is in charge of your record and SEVIS, and you are too, like you have an obligation to be making sure that your documents are correct. Every time you enter you want to check your I-94. You have an obligation to be keeping up with classes and everything else but that, making sure your you know your student record is valid, is really the key to maintaining your status.

Brian Mitchell: You mentioned the variation by country. Are there such things as quotas? In other words, only a certain number of student visas will be issued from Country X in a given year?

Kathleen Gasparian: That's a really great question. There is no statutory or regulatory limit on the number of student visas that can be issued, and there's no per country quota for student visas. There are for other kinds of visas, and there definitely are in the context of permanent residence, but not in the context of student visas. When we talk about like some countries have different rules, those are usually based on security issues, and then issues about whether or not student visas are issued in certain embassies, it's a regional issue, right? It's about economics. It's about that non-immigrant intent issue, politics, different types of things like that.

Brian Mitchell: Okay, let's talk about the kind of negative situation here. What happens if your visa is denied?

Kathleen Gasparian: Lots of student visa applications are denied at the embassy. That's really, really common to be denied at the Embassy. The number one reason for a student visa to be denied at the embassy is 214b, which is, we think you're coming to stay, or we think you're coming to do things beyond being an F-1, like, we think you're really coming to work. We don't really think your primary issue is being a student. We see that particular issue a lot more in undergraduate applications where maybe it's like somebody who's 18, and the family wants them to go to college in the US, and they don't really have that agency. But in the graduate admissions student visa, 214b is still really common, because, especially if you're fresh out of undergrad, there's not those ties to the home country. So, if it's a 214b denial, you know, the way you overcome it is you apply again, and maybe you apply again. You know, there's different companies out there where you can hire them to practice with you about things you might be able to say in this 5 min interview with the consular officer that might help. But it's really also about being really prepared and really thinking about every question that you could get asked and how to hit in that question - in your answer to that question, making sure you've talked about your plans, and you know, and why you've chosen that school.

The second reason that applications are denied, are you forgot one of your documents? You didn't bring the proof of finances. You didn't bring a copy of your undergraduate degree, You know, you forgot some piece of paper. You didn't have the I-20 with you. Those are the second most common reason that student visas get denied, and the way you overcome it is you reapply with all of the documents.

And then you have the uncommon reasons. Those uncommon reasons are you have a crime. You've lied. You've committed fraud. Right? That's a whole different scenario.

And then we have the dreaded limbo which is called administrative processing. So if you were coming from a country with maybe not the best relations with the US. Or you're coming from a country the US has said, this is a security risk, or if you're coming in a field that is very sensitive — I'm going to be a nuclear engineer. Then it's very likely that you could end up with administrative processing.

Administrative processing literally means the embassy needs to work on your file in some way. Somebody has to look at something. Maybe they want to check a record in the SEVIS database, but it is also shorthand often, for we are doing background checks of one kind or another. When it's administrative processing, you're kind of really in limbo, because reapplying is not going to do you any good. That security check has to be cleared. It's very difficult to get pulled out of administrative processing. There's not a lot you can do in terms of having your department or your school inquire or push on it, because it's just they've got to do the work on it, and so it can be a year to be stuck in administrative processing, especially if you're in a country where somebody feels like they have to go do a manual check of a record.

And yeah, so administrative processing, there's there's not a lot of any anything anybody can do except wait, in most cases.

Brian Mitchell: I will interject a little personal experience here, and say that, coming from an engineering field, I have provided letters in cases of administrative processing to simply clarify the type of research that student might doing saying, you know, it's not defense related, it doesn't require security clearance. Anything like that. I don't know if that's helpful in the end, though, these students typically do get cleared and do come into the program with a visa. It can cause a delay, as you pointed out. Just in my experience, the administrative processing usually does work out in some way.

Kathleen Gasparian: Yeah, and your listeners can't see me nodding along. You know, I think in general, consular officers are going to say something like letters don't really make a difference. I in general say, when you get to those stages, you want to feel like you've done everything you can. And, do it, right? As long as everything's true, it's not going to hurt.

Brian Mitchell: Right. You also mentioned family situations. What happens in the instance that the student entering may have a spouse, or even dependents, that they want to bring with them? What, what does that entail?

Kathleen Gasparian: An F-1 student can have their spouse and unmarried children under 21 accompany them to the United States. The dependents also do the same application through the embassy, and they are issued F-2 visas. It is — when we have restrictive immigration — it is common for the principal applicant, meaning the student to be issued a visa and the embassy to deny the spouse and children solely for the purpose of essentially making sure the student returns home. We haven't seen that over the last couple of years, but who knows what we can see in, what we'll see in the future, or we haven't seen a lot of it. I've seen it, but in some rare situations.

Spouses and children who come to the United States they can go to school. F-2s cannot be - the spouse cannot be degree seeking, but could go part time. But spouse and children cannot work as F's. If having your spouse work is really important, you want to talk to an immigration lawyer before you get here and see, are there other options other than an F, but usually, for our most populous migration countries there's usually it's pretty much student visa to come to study.

Yeah, so they can come but they can't work. But they can get driver's licenses and F-2 children can go to can go to school. It's when it's the spouse who can't be degree seeking.

Brian Mitchell: You mentioned some of the work limitations, especially on the F-2 visa. What are some of the other limitations on the F-1 visa for the student coming to study here. Maybe some things they hadn't thought about - other types of limitations.

Kathleen Gasparian: F-1 students when they come to the United States — there are some exceptions if you're coming for English language programs — but in general F-1, students are allowed to work up to 20 hours a week on campus for something that furthers the mission of the university, so I can work for my lab. I could work for my graduate lab I could work for, you know, a professor. I could work for the campus bookstore. I can't open my own private firm in my dorm room. That's not allowed. But I can do 20 hours a week on campus. and I can do full time during breaks.

If you get to the US and then there's an issue, let's say, you're receiving funds from your parents and all of a sudden there's a global economic crash, and now the financial situation has changed. It can be possible to ask for work authorization, because of financial hardship. That's done through the International Office. Like as an F-1 like the International Office is truly your key people on campus. Sometimes you may be

able to get authorization to work off campus or beyond 20 hours through something called curricular practical training (CPT). So, this is before you've graduated. This is the ability to get some extra experience in your field. It goes through the International Office. Each school, each campus, each college, university, sets their own rules for CPT right now. It has to meet some general regulatory requirements about being related to the field of study. But it's all governed by the International Office. They have to approve it before you begin working. If you work without permission, you violated your status and now we have a lot of trouble.

There can be ways to work off campus for like different international groups, depending on your field. And then the big thing that we look at for F-1s is the possibility of what's called OPT: optional practical training. There's sometimes you can use a little bit of it before you've graduated, but we really think of this as something you get after you graduate. So every F-1 student, when they graduate at each degree level, they can get one year of working in the United States. This is called regular OPT. And this is like my favorite thing in the world, because it's so simple. All you have to have is 20 hours a week of work in your field at, you know, and it can be volunteer. It can be research. It can be self employment. It can be all these things. It's this really lovely year of work. And then, if you're in a STEM field right now, you may be eligible for a 2-year extension of that OPT depending upon the conditions of your employment and your employer. That's a whole other podcast but yeah, so there's a, there's a lot that an F-1 student can be doing. We always say, if anything looks like work, we want to make sure that it is done with authorization. Because work working without authorization, tt really messes up your status. It makes it difficult to move down any pathway. So, we always just want to be really careful about it.

Brian Mitchell: You obtain your visa and got through airport, and you got to the university, and you checked in, what's the next step? Because I know some students who, for example, have not registered for classes in a timely manner, and that can cause an issue. So, what are some of the next steps to go through once you arrive on campus?

Kathleen Gasparian: The first place to go? The International Office! I can't really emphasize that enough and to be like timely taking care of registration and everything else. If you don't show up when you're supposed to, don't report to the International Office when you're supposed to, don't register when you're supposed to, that SEVIS database — that record keeping system — could automatically terminate your record. So, it's really important to do all those check ins to make sure that there's not an issue. And like, because everybody's got a different registration process like I said, checking in with the International Office is always going to be a safe bet.

Brian Mitchell: Okay, anything else we've missed specifically about F-1 visas?

Kathleen Gasparian: When we're talking about like coming to the US, you know the first semester, the beginnings of being on a student visa. You know my general rules of advice are: you are responsible for your immigration status. If there is a mistake, if something terminates, you are the one who's going to have to deal with it. So be knowledgeable about what your documents are. Know what how to get your I 94. Get it every time you come in. Know what the I-20 is. Make sure that you're keeping up to date with it. When your International Office emails you, answer the email like, because when something goes wrong, or if something goes wrong, you're the one who ends up with all of the consequences right? Even sometimes, even if it's not your fault, there can be really big consequences. So know your documents and keep up with your documents.

The second thing I would say is the number one thing you can do to make your life easy, to make your future easy, to have options when you graduate is to maintain your status. Be very cautious. Absolutely make sure you're working the way you're supposed to. Don't drop classes without talking to your

international student advisor. If you're struggling with a class, go talk to the International Office before you do anything, because dropping a class could mean that you end up out of status. So, there's always resources on campus to help you kind of through these cultural shifts.

Graduate school can be daunting for anybody, even people who've done their undergraduate in the US. That whole new culture of what graduate school is in the US can be really hard. And so go to your international office. If you feel like you're missing how you should be acting, or what you should be doing in class or whatever like, go to the International Office. They're going to have resources for you. So, know your documents, maintain your status.

Have fun and really use this time to be doing, you know, to be building yourself. I often have these conversations with students where they say, you know, "I'm not going to be competitive when I graduate, because I can't work." Well, you can be really competitive if you use that time wisely, right? There's so much you can be doing that's not work. You can be leading an organization on campus. You can be really doing things to help your professors. Right? You can be doing community service. You could be doing a ton of networking. You can be doing all sorts of things that are going to make you look really great when you graduate. You should not just be sitting around playing Xbox. Right? This is this is a great, amazing time, really getting to know your professors and your students when you are graduating as an international student, there can be challenges to find work. Knowing your international alumni, using your alumni network is going to be really important. And so like, dive in man, like, the more you, the more you can do the better your chances are finding employment and making those connections that you need.

Having a graduate degree is also going to be really beneficial in the immigration processes if you decide to stay in the US. It's really complicated to get into, but the short version is a master's degree matters, and so that can be really something to think about. I would say, just really use the time to learn and to make connections.

Brian Mitchell: That's all really great advice, Kathleen. I'm taking notes here myself!

Kathleen Gasparian: Oh! I talk to a lot of graduate students.

Brian Mitchell: You do! What types of things do you see in your private practice? Do you deal with F-1 visas at all, or are there other types of things?

Kathleen Gasparian: Yeah. So I've been an immigration attorney for 20 years, and I was active in the field for many years before that. I'm giving away my age! I actually started off working at a university doing J-1 exchange programs, helping with that. So, I have a long love of international education.

Realistically in the F-1 visa process, right — applying to school, getting the visa sticker in your passport — there's not a lot of room for an attorney, and I don't think it's a place where people really should be spending money. I mean, some people are going to want to, and that's okay. But most often when you're doing your F-1 beginnings, you have a lot of support from the school, and this is something that everybody thinks doesn't need an attorney. Getting prepared for that first interview? Yeah, we do that sometimes. Often international departments at universities will do that prep, so why pay for it? There's also companies that specialize just in that very, you know, narrow prepare for the interview.

What I do a lot of, where I come in, is after a person's come to the United States, and they're in F-1 status. We help out if something goes wrong, right? You drop out of class. Now you violated your status. You need to do a reinstatement. That's things we handle. You went crazy, and, you know, ended up getting arrested, something weird happened. That's when we help out. But where we really do, a lot of help is

after graduation, when people decide they want to remain in the US, make a transition to a work visa, make a transition to permanent residence. That's what I do a lot of.

Brian Mitchell: You mentioned your career. I always like to hear about how people came to the decisions in their career. What made you decide to go to law school, and in particular, how did you get into immigration law?

Kathleen Gasparian: When I did my undergrad, my first job out of undergrad I was a high school English teacher. I realized very quickly that I did not want to be a high school English teacher for the rest of my life, and I didn't know what I wanted to do. I really didn't. I was. But I was young, and I had you know, no spouse, no kids, and so I just kind of took different jobs and I ended up working at the International Office at Loyola University. And I'd gone into it because during my childhood I'd grown up all over the world. I grew up in Korea, Australia, because my dad was active duty military. And so I came into that office sort of just wanting to meet people from all over. I'd always loved travel, and I had a really supportive boss, and the next thing I knew I was doing I was helping out with these J programs. And I kept getting more responsibility. So, I went to law school, knowing I wanted to do immigration law. That was it! Like, I was the only one in my, you know law school, who wanted to be an immigration lawyer.

And then I was very fortunate. Like, I said I had a really supportive boss. I was able to then go work at an immigration court, and graduated and went and did clerkships with immigration courts. And then here we are. That's all I've ever done is immigration law. But always also with a real love of and connection with and support of international students, because that's where I cut my teeth.

Brian Mitchell: And I can tell you're passionate about it. And that's one of the most important things with building a career is doing something you love, right?

Kathleen Gasparian: Absolutely.

Brian Mitchell: So thank you for joining me today. Kathleen, this has been great and thanks to our listeners, all the links provided in my podcast are available on gradpost.com. That's G-R-A-D dash P-O-S-T. There you'll find additional resources and information to help you plan your adventure for an advanced degree. Remember, every degree counts.

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