

**LAW OFFICES OF  
EUGENE GOLDSTEIN AND ASSOCIATES  
150 BROADWAY, SUITE 1115  
NEW YORK, NY 10038  
212-374-1544  
Fax 212-374-1435  
[EGLAW@AOL.COM](mailto:EGLAW@AOL.COM)  
<http://www.eqlaw-group.com>**

**Eugene Goldstein**

**Lawrence Goldstein  
Lucy G. Cheung  
Michael J. Goldstein**

Jacqueline Singh  
Ana Peña  
Legal Assistants

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**MEMORANDUM**

To: International Education Program Administrators

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1) USCIS Relief for Japanese Impacted by Disasters

As a result of the recent disasters in Japan, ICE and USCIS have issued several directives for Japanese nationals and other affected foreign nationals from the Pacific who are stranded in the United States.

Initially, USCIS advised that it would extend authorized stays in the U.S. for an additional thirty days. Thereafter, USCIS released a more comprehensive statement on March 17, 2011 which permits:

- The grant of an application for change or extension of nonimmigrant status for an individual currently in the United States, even when the request is filed after the authorized period of admission has expired;
- Re-parole of individuals granted parole by USCIS;
- Extension of certain grants of advance parole, and expedited processing of advance parole requests;
- Expedited adjudication and approval, where possible, of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited processing of immigrant petitions for immediate relatives of U.S. citizens and lawful permanent residents (LPRs);
- Expedited employment authorization where appropriate; and
- Assistance to LPRs stranded overseas without immigration documents such as Green Cards. USCIS and the Department of State will coordinate on these matters when the LPR is stranded in a place that has no local USCIS office.

Of greatest interest to DSOs is the expedited adjudication of off - campus employment authorization for students experiencing severe economic hardship, and expedited employment authorization where appropriate. For the URL, click [here](#).

A Q&A was recently added to the March 17, 2011 release. The section on students states:

Q5. I am a Japanese national F-1 student currently enrolled in school in the United States. Due to the disaster, I can no longer cover the cost of my education. What are my options? Can I work during my stay in the United States?

A5. If your family in Japan is funding your studies, you may be eligible for work authorization based on severe economic hardship. According to the regulations at 8 CFR 214.2(f)(9)(II)(C) and (D), F-1 academic students may request off-campus employment authorization based on severe economic hardship caused by unforeseen circumstances beyond their control, such as changes in the financial condition of their source of support. If your family is encountering difficulties with funding your studies in the United States due to the recent natural disaster in Japan, you may apply for employment authorization based on severe economic hardship. To qualify, you must establish that you:

- Have been an F-1 academic student for at least one full academic year;
- Are in good academic standing and carrying a full course load; and
- Need employment authorization to avoid severe economic hardship.

You will need to obtain a recommendation from your Designated School Official (DSO). If your DSO agrees that you should receive employment authorization based upon severe economic hardship, he or she will update your SEVIS record with a recommendation that will be reflected on your Form I-20. Your DSO will need to sign and date your new I-20. Once you obtain this recommendation you must file Form I-765, Application for Employment Authorization, with your properly endorsed Form I-20, according to the filing instructions on the form. Although the filing fee for Form I-765 is \$380, you may apply to have that fee waived due to your inability to pay. For guidance on how to file a fee waiver request, please visit [www.uscis.gov/feewaiver](http://www.uscis.gov/feewaiver).

## 2) H-1B Developments

### ◆ When are Duplicate Copies of I-129 Petitions Required?

On March 7, 2011 AILA published a Q&A of a teleconference with USCIS Service Center Operations held on January 19, 2011.

Of interest for those filing I-129 petitions is the following:

**Question 3:** Is there any update respecting how duplicate copies of H and L filings intended for KCC will be handled in COS or EOS cases when the beneficiary will not be applying for a visa at the consulate until sometime well after approval of the COS or EOS?

**Response:** SCOPS reached out to the service centers and received confirmation that duplicate copies of the petition are forwarded to the KCC upon approval

regardless of whether the petition is a request for consular processing, EOS or COS as long as a duplicate copy is submitted...

◆ The TARP Box Goes Away

On March 16, 2011 the USCIS website was updated to note that employers who received TARP funds need no longer answer questions 1.d. in Part A of the I-129 Data Collection and Filing Fee Exemption Supplement. The law which required the TARP question expired on February 16, 2011.

◆ USCIS Associate Director Testifies Before Congress

On March 31, 2011 Donald Neufeld, Associate Director of the USCIS Service Center Operation Directorate, testified before the House Judiciary Committee, Subcommittee on Immigration Policy and Enforcement regarding H-1B visas. The written testimony is a good survey of the H-1B visa filing and adjudications process including recent investigatory tools such as work site visits and the use of commercially available data from independent sources to validate basic data about petitioning companies. The program is called "Validation Instrument for Business Enterprises" (VIBE).

The testimony may be found by clicking [here](#).

3) USCIS Policy Memo on Fee Waiver Guidelines

On March 13, 2011 USCIS issued a "Policy Memorandum" regarding Fee Waiver Guidelines. The Memo supersedes all prior directions and is incorporated into the "Adjudicators Field Manual." The Memo discusses the Form I-912 and provides criteria for determination of the waiver, including receipt of means – tested benefits, low household income, or recent financial hardships – and now the various categories apply to specific applications. Please note that the I-912 does not carry a fee, and if you are unsure if the request will be granted and include a check, just to be sure that the form will be processed, rest assured, the check will be accepted.

4) "Real ID" Compliance Date Extended to January 15, 2013

The Real ID Act was originally signed on May 11, 2005 by former President George W. Bush. The Act, scheduled to go into effect on May 11, 2011, prohibited federal agencies, from accepting a driver's license or a personal ID card issued by a U.S. State for any official purpose

unless the card met requirements set forth by the Act. Many States criticized the Act because it would have created a national ID card, and would have been very expensive to administer. The "Federal Register" of March 7, 2011 carried a "Final rule" extending the start date to January 15, 2013. Using a mastery of disingenuousness, the Department of Homeland Security noted that "DHS recognized that many states were having trouble meeting the statutory requirements of the Act." In fact, 16 States passed laws forbidding compliance with the Act, and 8 States enacted resolutions which effectively boycotted it.

Several of the supporters of the Act, including Congressman James Sensenbrenner (R-Wisc.), House Judiciary Chairman Lamar Smith (R-Tex), Oversight and Government Reform Chairman Darrell Issa (R-Calif.), and Homeland Security Chairman Peter King (R-N.Y.) denounced the deadline extension. The enemies that the extension made, speak for themselves. An in depth CBS news story may be found by clicking [here](#).

5) ICE Publishes Civil Immigration Enforcement Priorities

On March 2, 2011 ICE published a Memorandum for all employees setting forth "Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens." These priorities apply primarily to those posing a danger to national security or a risk to public safety, and involve violent criminals and other felons, recent illegal entrants, and fugitive aliens. Nowhere is SEVIS mentioned.

6) Will Same-Sex Marriages be Recognized by Immigration Authorities?

On Wednesday February 23, 2011 Attorney General Holder announced that the Justice Department would not support the Defense of Marriage Act (DOMA) which, in part, refuses to recognize gay marriage for federal purposes, even if lawfully performed by a State. Because of a history of discrimination, it was concluded by the Administration that Section 3 of DOMA, as applied to legally married same-sex couples, failed to meet a heightened standard of constitutional scrutiny and was, therefore, unconstitutional. The President instructed the Justice Department not to defend the statute in court. This announcement may be trickling down to immigration authorities. Apparently, USCIS District Offices in Washington, D.C. and Baltimore, Maryland announced that they would accept adjustment of status green card petitions, but put them on hold pending a decision by the courts in states permitting same-sex marriages and from other countries which recognize same-sex marriages. The filing of green card petitions would permit travel and employment benefits until final adjudication.

USCIS Headquarters now appears to be waffling regarding the filing of green card applications and applicants may actually be at risk of a deportation proceeding should the application go wrong. As of March 30<sup>th</sup> Headquarters, after receipt of an opinion from General Counsel, issued a statement that District Offices did not have authority to accept and hold applications and that petitions would no longer be kept on hold.

It has also been reported that a respected Immigration Judge in New York adjourned the deportation proceeding of an Argentinean woman married to a female American citizen in Connecticut in 2010. The adjournment was granted with the consent of the government attorney.

*The New York Times* of March 29, 2011 carried a comprehensive story entitled "Confusion Over Policy on Married Gay Immigrants" which may be viewed by clicking [here](#). The evolution of events in this area will have to be watched carefully, and any action taken should be based on serious and knowledgeable legal advice.

*Many thanks for your comments, your suggestions and for referring your students, scholars and faculty members.*

*Please let me know if you have any questions, or if you would like copies of any of the materials covered.*

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