

**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 Developments

◆ H-1B Cap Count

On June 26, 2011 USCIS updated the H-1B cap count to note that as of July 22, 2011, approximately 21,600 H-1B cap-subject petitions were receipted against the 65,000 total cap.

Further, USCIS has also receipted 15,300 H-1B petitions against the 20,000 cap for beneficiaries with advanced degrees

◆ Transformation Timeline

The big word for USCIS this year is “transformation.” USCIS is anxious to publicize this program whereby all of its forms will be converted for e-filing. The May bulletin “External Data Interface Standards” (EDIS) sets forth the intended conversion schedule:

**Updated Transformation Timeline**

Beginning this year, Transformation will be rolled out incrementally, delivering increased functionality through a series of six-month releases rather than large-scale deployments.

The first release will initially introduce the Application to Extend/Change Nonimmigrant Status (Form I-539) benefit type in the new system with the core capabilities of online accounts, e-filing, automated risk and fraud analysis, and basic case management in late 2011. Initially, only I-539s that are not being filed concurrently with any other application will be accepted for submission on behalf of principals and their dependents. Following the I-539 release, additional non-immigrant applications, immigrant applications, humanitarian application and naturalization will gradually follow, in this order, with each subsequent phase of Transformation. USCIS is confident that this phased approach minimizes the risk to the overall immigration enterprise, allows for collaboration with key stakeholders, and supports proper testing.

In reply to the question as to whether USCIS users will be able to elect between a paper form and an electronic filing, USCIS stated:

Answer: USCIS is considering mandatory e-filing as part of its overall Transformation strategy and the Agency is working through a number of steps to gather information and propose appropriate regulatory changes to make e-filing mandatory. USCIS is working through the regulatory process to seek general authority to mandate e-filing for benefit requests, with the potential to begin implementation of the mandate later this year with the I-539 benefit type release. Should mandatory e-filing be adopted, a transition would occur when regulatory authority has been secured and sufficient transition time for the community has been provided.

◆ RFE Response Time Tiers Eliminated – 12 Weeks Standardized

For many years applicants who USCIS determined had submitted deficient applications would receive a Request For Evidence (RFE). The time period for response was generally 90 days. Several years ago USCIS developed a three tier RFE response period ranging from 30-90 days depending upon complexity, and the foreign location of documents to be obtained. Unfortunately, the norm response time became 30 days. An Interim Memo was posted by USCIS on July 7<sup>th</sup> which has adjusted this RFE response period.

The new periods are 30 days for form I-539, and a standard time of 84 days for all other form types regardless of where evidence is located, and whether it is for initial or additional evidence. 84 days is 12 weeks and this modification effectively is a welcoming return to prior practice.

◆ Change of Address Instructions

The minutes of an AILA/USCIS Field Operation Liaison Meeting on May 20, 2011 discussed many items, including a request that F, J and M non-immigrants not be required to submit an AR-11 if they are complying with SEVIS. USCIS responded:

b. In addition, would USCIS also consider adding to all address change instructions and related communications that F, J, and M non-immigrants are not required to submit the AR-11 and can instead comply with the address change requirement by providing a change of address to their DSO/RO, who will then update SEVIS accordingly?

**USCIS Response:** We will make a note on the Change of Address information page 6 that F, M, and J nonimmigrants do not need to submit an AR-11 if they have notified their DSO or RO of the change and SEVIS has been updated accordingly. However, this information will not be included on the Change of Address online system homepage as students and exchange visitors may need to use this system to change their address on pending applications (e.g. Form I-765 for OPT).

◆ E-Scam Lottery Warning

On March 2, 2011 USCIS released a publication regarding email scams and avoiding green card lottery fraud schemes. The publication notes that DV lottery winners may check their entry status at <http://www.dvlottery.state.gov> on or after May 1, 2011 and through June 30, 2012. The Kentucky Consular Center is notifying winners by snail mail.

2) State Department Developments

◆ A Message to Students

The “NAFSA.news” of July 19, 2011 published a “Message For Students Planning to Study In the United States This Year.” The message is by the Deputy Assistant Secretary for Visa Services and provides various items of advice in general terms and, as well as various resources for reference. The message is dated June 20, 2011.

◆ US/Russia Agree to 36 Month Multiple Entry Visas

On July 13, 2011 the State Department issued a Fact Sheet regarding the agreement between the U.S. and the Russian Federation regarding visa issuance. As a general rule multiple entry visas valid for 36 months will be issued on a reciprocal basis for business and tourist entrants. Apparently, the documents needed for the application are also being reduced.

◆ State Releases India Biannual Fraud Update for 2009

The U.S. Consulate in Chennai published an “India Biannual Fraud Update” dated October 13, 2009. The publication is quite interesting in discussing the general visa process in India. A few interesting paragraphs follow:

1. India-wide consular operations are among the busiest in the world. In FY-2008, Mission India processed more than 756,000 non-immigrant visa applications and 27,000 immigrant visa applications. While the majority of applicants from India are bona fide travelers and migrants, the volume of fraudulent applications is still significant. Some states, such as Gujarat and Punjab, are traditional sources of migration out of India and fraudulent applications from these areas are more common than from other regions of India. The state of Andhra Pradesh, and in particular its capital of Hyderabad, has been identified as a large center of documentary fraud which affects all India posts.

The cable goes on to note that the visa classes most often targeted for fraud were the B-1/B-2 business traveler/tourist, H-1B temporary worker, F-1 student, and P-3 culturally unique artist. It goes on to note that during the reporting period all consulates identified 3,083 total cases of possible nonimmigrant visa fraud, with just over one half resulting in a finding of confirmed fraud.

The nature of H-1B fraud was found to be "inflated or fabricated educational and employment qualifications with the vast majority of these documents coming from Hyderabad." It was also found that some H-1B beneficiaries had multiple H-4 spouses applying as their dependent.

R-1 (Religious Worker) issues regarding fraud were detected among Tibetan refugees, Sikh raagis, and Hindu priests. However, since the introduction of new application procedures, this fraud has been eliminated.

Student applicants were described at paragraph 16 which states:

16. Many student applicants, even legitimate ones, are taken in by document vendors. They present fraudulent packages of bank statements and land documents in their interviews, and they are guided by advertising and news articles, such as the one in Hyderabad which declared, "Study Part-Time, Work Full-Time" on an F-1 student visa. In May, police arrested a document vendor in Hyderabad who provided fraudulent financial records for nearly 100 visa applicants, including many well qualified students. In June 2008, Chennai conducted an open house for local journalists to dispel the myths surrounding the visa process and to encourage students in particular not to rely on visa facilitators. CA/FPP has been instrumental in identifying

schools that have a bad track record of students not maintaining status once in the United States. Mumbai confirmed a very low overstay rate in its recent Summer Work and Travel validation study (ref M).

Under the heading of “Criminal Fraud Investigation,” it was noted that:

39. Fraudulent civil documentation is common in India, both in terms of documents that have been fabricated outright, and documents issued improperly. Posts see a myriad of fraudulent documents, including fake civil registry documents, counterfeit entry/exit stamps and third-country visas, employment letters, sponsorship and financial documents, bogus degrees and entrance examination scores, and altered marriage and site photographs. Visa consultants sell such documents to applicants who seek their advice about how to qualify for visas. Peddlers of fraudulent documents abound and operate quite openly in major Indian cities and even some of the smaller towns. Government officials are not above fraudulent issuances either. Virtually all birth certificates, death certificates, and marriage registration documents can be purchased from corrupt local government officials or brokers.

It was noted that:

The Chairman of the State Board of Education in Andhra Pradesh has been instrumental in developing and maintaining the integrity of OLIVE, the Online Verification system for high priority educational degrees in the state. A similar program, MARTINI, has been set up in the state of Karnataka.

It was also noted that the new consular post in Hyderabad has improved interaction with local government officials.

◆ Visa Lottery Rerun

On July 15, 2011 the State Department published the results of the latest DV lottery. This was the second time that the selection process was run, as the first was canceled due to computer errors. We all know what computer errors are caused by.

The “winners” of the first selection filed a law suit against the State Department in Washington. This law suit was dismissed on July 14, 2011. The dismissal of the lawsuit permitted the second drawing to take place.

3) ICE Developments

◆ I-515A Response Time Limited to 30 Days

On July 14, 2011 SEVIS posted a notice number:1010-01A regarding I-515A processing. The notice “cautions” that SEVIS has modified the I-515A process in that SEVP will only accept mailed in, original, and not electronic copies.

Further, the recipient of the I-515A is required to comply within a 30 day submission deadline. The notice states:

Starting July 15, 2011, the Student and Exchange Visitor Program (SEVP) will terminate the Student and Exchange Visitor Information System (SEVIS) record status of any F or M nonimmigrant who does not comply with the Form I-515A directive within the 30-day response period. Within five business days of the nonimmigrant receiving temporary admission into the United States, SEVP will notify the relevant designated school officials (DSOs) of the issuance of the Form I-515A and the future termination date. At the end of the 30-day response period, the nonimmigrant has two choices if the nonimmigrant has not complied with the Form I-515A:

- Depart the United States immediately
- File immediately for reinstatement with U.S. Citizenship and Immigration Services (USCIS)

If the reinstatement is granted, a new I-94 will be issued. The change only effects F or M arrivals. J-1 entrants will be controlled by new instructions currently being developed.

◆ SEVIS Publishes “General Summary Quarterly Review”

On July 1, 2011 SEVIS published its “General Summary Quarterly Review” for the quarter ending June 30, 2011. The publication is full of wonderful statistics which were obtained on July 1, 2011. The review notes that various organizations including DHS-ICE Counterterrorism and Criminal Exploitation

Unit (CTCEU), may request data and information from SEVIS. It notes that SEVP continues to see the number of requests increase as SEVP's abilities and SEVIS' capabilities expand. The information is available to the State Department Exchange Visitor Programs, Congress, schools, embassies and consulates, law enforcement and intelligence agencies, other governmental agencies and entities, and "private organizations." In other words it would appear that the information stored in SEVIS is available to practically anyone who would like to see it.

The Review notes that there are records for 1,142,830 active nonimmigrant students, exchange visitors and dependants and that there are 8.8 million records in total. California has the most schools followed by New York, Florida, Texas, and Pennsylvania. California leads the nation with the number of students followed by New York, Texas, Massachusetts, Florida, Illinois, and Pennsylvania. Although there are lots of statistics there is no discussion regarding SEVIS files as a tool of enforcement against antiterrorism, or any other justification. There is nothing regarding how many subjects are out of status, how many arrests were made, nor the charges for individual arrests.

It is unknown why this information is not being released.

◆ DSO At UNCC Pleads Guilty

ICE released a notice on July 20, 2011 stating that a former DSO at the University of North Carolina at Charlotte (UNCC) had pleaded guilty to concealing and shielding foreign students who had violated their status. The notice followed an ICE investigation.

Thomas C. Briggs, 48 of Charlotte was charged with having made repeated false entries into the SEVIS system as a DSO, from approximately January, 2007 and on/or about June, 2009 with respect to approximately 66 individuals. These entries "falsely reflected that these foreign nationals were in compliance with the terms of their F-1 student visas, specifically indicating that the foreign nationals were properly enrolled and maintaining a full course of study at UNCC" – information known to Mr. Briggs to be false.

The notice stated that immediately upon discovering Mr. Briggs' activities, UNCC immediately contacted federal law enforcement to report the misconduct and that the university has fully cooperated with the investigation. Mr. Briggs was terminated in June, 2009.

ICE officials determined that Mr. Briggs was involved "in a misguided, but nevertheless illegal, effort to assist foreign students in completing their academic studies." The news release assured the public "that the safety of



our communities was not jeopardized in any way by Briggs' criminal conduct." A plea of guilty has been entered and Mr. Briggs faces a maximum term of five years, and a maximum fine of \$250,000. He remains free on bond and a sentencing date is yet to be set.

♦ SEVIS Withdrawn from "University" of Northern Virginia - Student Protocols

SEVIS has posted an advisory to UNV students notifying them that on July 28, 2011 the "school" was served with a "Notice of Intent to Withdraw" (NOIW) the school's SEVP certification and SEVIS access. In fact, the SEVIS access has already been withdrawn.

Students are given the following options:

1. Continue to attend classes and maintain active status, or
2. Seek transfer to another SEVP – approved institution.

If the student chooses neither option, she or he must leave the U.S. immediately. If the student chooses the first option, she or he must report any changes (or questions) directly to SEVP M-F, 7am-6pm (EST), (703)603-3400. At other times, a message should be left – which will be returned within 24 hours.

Apparently, ICE has learned from the foreign policy issues raised when it arrested Tri Valley students with no warning.

4) Chinese J-1's Face Culture Shock in Brooklyn

The *New York Times* of June 28, 2011 contained an interesting story entitled "Taking Orders in Something Like English." A group of Chinese students came to Brooklyn in order to learn English while working at Nathan's in Coney Island. One student said "...in University in Beijing, I learned British English but the people here in Brooklyn speak very differently." Apparently, Brooklyn residents do not pronounce the "r" at the end of words. Not only have the Chinese J-1s learned just what is a hot dog, but they have learned that the correct pronunciation of pepper is pepa as in saltnpepa. Fuhgeddaboutit!

If anyone would like to learn about some of my favorite Brooklyn restaurants, please check my website. Nathan's isn't there.

*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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