

**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>**

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**Eugene Goldstein**

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

**MEMORANDUM**

Jacqueline Singh  
Ana Peña  
Legal Assistants

To: International Education Program Administrators

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1) GAO Report: "Student and Exchange Visitor Program DHS Needs to Assess Risks and Strengthen Oversight Functions (GAO-12-572)"

In June the GAO (Government Accountability Office) published a report to "Congressional Requestors" entitled "*Student and Exchange Visitor Program DHS Needs to Assess Risks and Strengthen Oversight Functions*." The report is a thirty nine page document, plus appendices. It is a very serious and in depth critique of SEVP, both as to operations and management.

The report, although written in colorless and innocuous bureaucratese makes some strong points. The report may be found [here](#).

A very brief summary states that the GAO found:

U.S. Immigration and Customs Enforcement (ICE) has not developed a process to identify and analyze program risks since assuming responsibility for the Student and Exchange Visitor Program (SEVP) in 2003, in accordance with internal controls standards and risk management guidance. Within ICE, officials from SEVP and the Counterterrorism and Criminal Exploitation Unit (CTCEU), which tracks, coordinates, and oversees school fraud investigations, have expressed concerns about the fraud risks posed by schools that do not comply with requirements. Investigators said that identifying and assessing risk factors, such as the type of school, are critical to addressing potential vulnerabilities posed across the more than 10,000 SEVP-certified schools. However, SEVP does not have processes to (1) evaluate prior and suspected cases of school noncompliance and fraud and (2) obtain and assess information from CTCEU and ICE field offices on school investigations and outreach events. For example, ICE reported that it has withdrawn at least 88 schools since 2003 for non-compliance; however, ICE has not evaluated schools' withdrawals to determine potential trends from their noncompliant actions because case information is not well-organized, according to SEVP officials. Without a process to analyze risks, it will be difficult for ICE to provide reasonable assurance that it is addressing high-risk vulnerabilities and minimizing noncompliance.

A few interesting issues emerged from the GAO report. First is the widely overlooked fact that only one of the 9/11 terrorists entered the U.S. on a student visa. Our national mythology seems to have developed that most, if not all, of the terrorists were students. Further, since 2005, approximately 172 schools have

been determined to be “potentially non compliant with program requirements” and that unfortunately, risk factors were not developed by an analysis of all of these schools and their reasons for non compliance. It was also noted that as of March, 2012 ICE reported that it had withdrawn 860 SEVP certified schools from the program since 2003 for compliance issues, voluntary withdrawal and school closures. Further, of the 172 post-secondary institutions on SEVP’s December 2011 compliance case log “about eighty three percent (or 142) offer language, religious, or flight studies, the language schools representing the highest proportion.” It was also noted that SEVP had not established a process to obtain information from the units’ criminal investigators. This information has a bearing on the characteristics of schools which commit fraud and how these schools are able to exploit the weaknesses of the certification program.

One interesting conclusion is that despite the fact that SEVP is self financed through student and school revenues, its revenues have increased in recent years. However, ICE hasn’t analyzed how to allocate its resources among its mission areas such as certifications, compliance monitoring, and recertification. It was noted that an appropriate risk assessment system would help SEVP analyze appropriate resource allocations. In short, SEVP has so much money it doesn’t know what to do with it.

An analysis of the certification and the recertification programs demonstrated that:

Given the delays in completing the first recertification cycle, ICE is not positioned to address gaps in SEVP’s case files and cannot provide reasonable assurance that schools that were initially certified to accept foreign students are still compliant with SEVP regulations.

For those who are interested in what has happened to SEVIS II, the report provides some interesting news buried in a footnote on page 28. Footnote 41 states:

ICE is developing the functional requirements for SEVIS II, a second generation version of the data system that is intended to be more technologically advanced and user-friendly and to streamline the process of students obtaining student visas and studying in the United States. Initially planned for deployment in September 2009, SEVIS II has been delayed until November 2014 due to difficulties in system design. ICE terminated the original contractor based on its challenges in developing an accurate and complete set of functional requirements for the system, which required the agency to hire a new contractor for system design. ICE also plans to hire a contractor for SEVIS II development and implementation.

In short, it would seem that the first contractor was fired, and a replacement has not yet been hired. It may be some time until a usable SEVIS II surfaces.

Further, the report notes that SEVIS II fails to provide “reasonable assurance that SEVIS data on schools’ licensing or accreditation status is accurate following initial certification” and that that program would not indicate whether a school has lost its state license and was unable to operate legally within a state.

The report carries a response from the Department of Homeland Security which in effect, agrees with the GAO report and indicates how the agency plans to address the noted short-comings in agency process and management.

For those of us who must live with SEVIS and SEVP, the report provides an interesting and incisive critique and analysis of the program.

As we used to write in grade school book reviews this is a very interesting book and I think all of my friends should read it – especially on those long languid August days.

## 2) Congressional Testimony Following The GAO Report

Following the introduction of the GAO study, testimony was provided to Congress in order to address the issues.

The author of the report provided a summary to Congress entitled “*Student and Exchange Visitor Programs DHS Needs to Take Actions to Strengthen Monitoring of Schools*” (GAO-12-895T) which may be found [here](#). This testimony is nine pages and summarizes the report analysis of how 850,000 active foreign students were monitored at over 10,000 certified schools.

The ICE response was provided by the Homeland Security Investigations National Security Investigations Division Assistant Director John Woods in written testimony to the Senate Sub Committee of Immigration Refugees and Border Security. This testimony, essentially, repeated the acknowledgement of issues raised in the original GAO report. Mr. Woods’ testimony to the House subcommittee further repeats the response, but also notes that “ICE opens approximately 6,000 investigative cases annually, and assigns them to our special agents in the field for further investigations. These investigations resulted in over 18,000 administrative arrests and approximately 35 criminal arrests per year.” What that statement means is uncertain as administrative arrests generally mean the beginning of removal proceedings for the undocumented. How this relates to school fraud is uncertain.

3) Service Centers Taking OPT Deadlines Seriously

AILA recently issued information regarding filing deadlines for OPT applications after it was learned that some Service Centers are taking a more restrictive approach to these deadlines in the OPT context, and that unexpected denials are being received. It was noted that the student must file the I-765 up to ninety days prior to completion of studies and no later than sixty days thereafter. The I-765 must also be filed within thirty days of the date that the DSO entered the recommendation of OPT to the SEVIS record. Further, I-765 instructions (3.a.) on page two require that an I-20 submitted with the I-765 requesting OPT must be endorsed by the DSO within the past thirty days.

In the past an OPT application received more than thirty days after the DSO entered the OPT recommendation in SEVIS would result in an RFE for a new I-20 signed by the DSO which could then be reprinted by the DSO without a new recommendation, and signed and submitted. Unfortunately, USCIS now takes the position that the phrase "within thirty days of the date the DSO enters the recommendation of OPT into his or her SEVIS record," does not permit this approach. A recent stakeholder engagement meeting on June 9, 2012 verified this change in procedure.

If the student is unable to submit the I-765 within thirty days of the OPT recommendation in SEVIS, the DSO should cancel the original recommendation and enter a new one. A new submission will have to be made with additional fee, providing the student is still in status. If the student is beyond the sixty day grace period, but within the thirty day period subsequent to the denial, a motion to reopen may be filed. Don't these people have anything serious to worry about?

4) Vermont Service Center Advises On:

◆ ELIS and the I-20

The Vermont Service Center recently issued its Stakeholder Newsletter Volume 1, Issue 12.

The Newsletter notes that ELIS, the electronic filing system is now available for forms I-539. If an ELIS filing is used, USCIS will accept a scanned electronic version of the valid and properly executed I-20 or DS-2019. Paper filings will permit photocopies of these documents. Original signatures on the two SEVIS forms are no longer required. However, regardless of the filing method, the I-20 or DS-2019 will not be returned to the applicant upon approval of the I-539. If an applicant wants a stamped I-120 or DS-2019, an Infopass appointment must be made at the local

USCIS office. The stamping is considered a transitional service that will be performed for six months from the ELIS launch.

◆ Foreign Document Translations

The newsletter goes on to discuss submission of foreign documents with translations. It notes that any foreign language document must be accompanied by a full English language translation which has been certified as complete and accurate by the translator who must note that they are component to translate from that language into English. It goes on to state "official extracts are acceptable but only if they contain all the information necessary to make a decision on a case." The extract must be prepared by the authorized keeper of the records and a summary of the document prepared by a translator is not acceptable. If the translation is not appropriate or a copy of the original foreign language document is not included an RFE will be issued.

◆ Name Protocols

In regard to all I-129, I-539, I-765 and I-131 applications, if there is a difference between the name on the application and the name shown on the passport or visa, USCIS will use the name on the passport or the visa if the visa was issued subsequent to the passport. The approval notice will be in the name on the passport or visa.

5) Website Improvements

◆ DOS Lists Consular Waiting Times

On July 26 DOS posted a page on which time periods can be accessed for scheduling nonimmigrant visa appointments – including F-1 and J-1 pickup times for approved visas. A link to specific consulates is provided. The site may be found [here](#).

◆ USCIS Goes Multilingual

On July 26 USCIS launched its online Multiple Resource Center. The Center provides USCIS resources in 23 languages (USCIS says 22 but 23 are listed.) The Resource Center may be found [here](#).

6) Interesting Statistics

Several publications have been released over the last month which provide some interesting statistics about student flows. An annual flow report dated July, 2012 was issued by the Office of Immigration Statistics Policy Directory. The complete charts may be found [here](#).

The charts note that students represented 3.4% of admissions in 2011.

Nonimmigrant Admissions (I-94 only) by Class of Admission: Fiscal Years 2009 to 2011						
	2011		2010		2009	
Class of Admission	Number	Percent	Number	Percent	Number	Percent
Students	1,788,962	3.4	1,595,078	3.4	951,964	2.6
Academic students (F1)	1,702,730	3.2	1,514,783	3.3	895,392	2.5
Vocational students (M1)	18,824	--	17,641	--	14,632	--
Spouses and children of academic and vocational students (F2, M2)	67,408	0.1	62,654	0.1	41,940	0.1
Exchange visitors	526,931	1.0	543,335	1.2	459,408	1.3
Exchange Visitors (J1)	469,993	0.9	484,740	1.0	413,150	1.1
Spouses and children of exchange visitors (J2)	56,938	0.1	58,595	0.1	46,258	0.1

The F and J flow from Canada is

	Land Admissions			Non-Land Admissions		
Class of Admission	2011	2010	2009	2011	2010	2009
<b>Canada</b>						
Total Canada	1,749,884	1,310,916	159,525	118,295	118,024	132,117
Workers in specialty occupation (H-1B)	70,586	55,197	6,099	17,650	17,762	16,057
North American Free Trade Agreement (NAFTA) professional workers (TN)	794,836	553,834	52,031	20,323	19,841	25,762
Intracompany transferees (L1)	131,637	98,494	7,509	12,579	11,238	10,725
Treaty traders and investors and spouses and children (E1 to E3)	46,460	31,453	2,306	3,959	3,723	3,808
Academic students (F1)	364,493	278,851	25,596	15,141	14,601	14,699
Exchange Visitors (J1)	27,167	26,293	4,082	3,951	3,408	3,532
Temporary visitors for pleasure (B2)	94,512	73,347	22,628	13,224	13,475	15,739
Visa Waiver Program-temporary visitors for pleasure (WT)	x	x	x	x	x	x
Temporary visitors for business (B1)	37,514	28,648	10,077	5,109	5,845	6,759
Visa Waiver Program-temporary visitors for business (WB)	x	x	x	x	x	x
All other classes of admission	182,679	164,799	29,198	26,359	28,131	35,036
<b>Mexico</b>						
Total Mexico	14,788,895	10,908,618	4,794,510	2,263,664	2,009,170	1,806,549
Workers in specialty occupation (H-1B)	24,726	17,876	2,924	12,849	12,696	11,428
North American Free Trade Agreement (NAFTA) professional workers (TN)	7,056	48,747	8,924	14,240	11,699	12,301
Intracompany transferees (L1)	47,177	35,889	5,777	14,978	13,761	14,476
Treaty traders and investors and spouses and children (E1 to E3)	129,582	89,060	12,709	11,054	9,231	8,777
Academic students (F1)	318,228	277,337	57,185	20,081	17,827	16,312
Exchange Visitors (J1)	19,832	18,854	4,885	8,263	7,927	7,504
Temporary visitors for pleasure (B2)	12,884,148	9,470,250	4,210,932	1,789,581	1,540,249	1,379,713
Visa Waiver Program-temporary visitors for pleasure (WT)	x	x	x	x	x	x
Temporary visitors for business (B1)	743,764	549,958	263,158	332,727	338,411	302,495
Visa Waiver Program-temporary visitors for business (WB)	x	x	x	x	x	x
All other classes of admission	551,382	400,647	228,016	59,891	56,369	53,543
<b>All other countries</b>						
Total other countries	2,611,821	2,318,712	1,344,224	31,549,727	29,806,076	27,994,629
Workers in specialty occupation (H-1B)	48,425	43,298	10,076	320,329	307,934	292,659

North American Free Trade Agreement (NAFTA) professional workers (TN)	x	x	x	x	x	x
Intracompany transferees (L1)	64,361	57,080	13,234	292,044	286,270	281,666
Treaty traders and investors and spouses and children (E1 to E3)	77,737	66,810	14,478	185,309	183,423	187,223
Academic students (F1)	71,943	100,048	22,912	912,844	826,119	758,688
Exchange visitors (J-1)	27,164	43,345	11,996	383,616	384,913	381,151
Temporary visitors for pleasure (B2)	916,798	769,343	385,909	8,107,875	7,277,378	6,665,583
Visa Waiver Program –temporary visitors for pleasure (WT)	1,149,129	967,873	793,569	14,556,938	13,853,696	13,478,984
Temporary visitors for business (B1)	70,542	71,724	36,132	1,866,276	1,949,811	1,789,471
Visa Waiver Program-temporary visitors for business (WB)	55,777	46,253	31,094	2,579,695	2,210,358	1,946,267
All other classes of admission	129,945	152,938	24,824	2,344,801	2,526,174	2,212,937

A Yearbook of Immigration Statistics: 2011 by Homeland Security breaks down the flow by month with January and August being the heaviest entry months for F-1s and J-1s, and February and April being the lightest. Nonimmigrant Admissions (I-94 Only) By Selected Category of Admissions and Month of Arrival: Fiscal Year 2011

Month of Arrival	Students and exchange visitors
Total	2,315,893
October 2010	146,320
November 2010	138,019
December 2010	171,589
January 2011	373,693
February 2011	127,211
March 2011	161,930
April 2011	101,078
May 2011	144,438
June 2011	190,907
July 2011	157,243
August 2011	411,740
September 2011	191,725

The Yearbook statistics may be found [here](#) under table 31.

A final note for this summer season is to advise your students to be careful of tattoos. Apparently, Mexican gang members with certain tattoos have been detained, denied visas or delayed benefits because the examiner did not like specific tattoos. This issue arises mostly with individuals from Latin America where the tattoos may indicate some affiliation with criminal organizations which is a ground of inadmissibility-even if the tattoo was applied only because of style.



*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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