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MEMORANDUM

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To: International Education Program Administrators

- 1) State Department Developments
 - a) DOS Publishes "Final rule" on "Interview Waiver Authority"
 - b) DOS Publishes "Final rule" Permitting Machine Readable Visas
 - c) DOS Issues "Fact Sheet" on Visa Waiver Program
- 2) DAPA Litigation Goes to US Supreme Court
- 3) DHS Publishes "Notice" in the *Federal Register* Authorizing Employment Authorization for Nepali F-1 Students Experiencing Severe Economic Hardship as a Direct Result of the August 25, 2015 Earthquake.
- 4) NSC Opines on 10 Day Requirement to Report Changes in Employment
- 5) VSC Discusses Adjudicator Training Methodology
- 6) DHS Secretary Comments in *Washington Post* Report on DHS Digitized Records.
- 7) American Immigration Council Issues "Special Report" "Enforcement Overdrive; A Comprehensive Assessment of ICE's Criminal Alien Program"

We are pleased to let you know that as of December 14, 2015, we are changing our physical address. We are moving a few blocks east to 80 Maiden Lane, Suite 1008, New York, NY 10038. All of our other contact information will remain the same. Other changes are in the works and will let you know.

1) State Department Developments

a) DOS Publishes “Final rule” on Interview Waiver Authority

On November 10, 2015, the *Federal Register* carried a “Final rule” by the State Department which sets forth the circumstances under which nonimmigrant visa interviews may be waived. This authority was originally published in the *Federal Register* on August 20, 2012.

Generally, an interview may be waived if the applicant is within 12 months of the previously issued visa, and is seeking reissuance in the same category, applying at a consular post of the applicant’s usual residence, and there is no indication of visa ineligibility or noncompliance with US immigrant laws or regulations. There is also a provision for issuance in the “national interest”, or as the result of “unusual or emergent circumstances”. The rule was effective upon publication and may be found [here](#).

b) DOS Publishes “Final rule” Permitting Machine Readable Visas

The *Federal Register* of November 2, 2015 carried a “Final rule” reflecting changes in technology including long used machine readable visas, and a planned future practice of electronically issuing visas. The authority to use a visa stamp is being eliminated. The rule may be found [here](#).

c) DOS Issues Fact Sheet on “Visa Waiver Program”

The Department of State issued a “Fact Sheet” on the Visa Waiver Program on November 20, 2015.

The recent terrible incidents in Paris have had domestic repercussions. Although the House of Representatives voted in record time to weigh down the admission of Syrian refugees with additional safeguards, Senator Charles Schumer (D., NY.) has been discussing greater safeguards in the Visa Waiver program. Perhaps DOS issuance of the “Fact Sheet” was its response. The “Fact Sheet” may be found [here](#). The Secretary of DHS and the White House have also expressed support for, as yet, unstated modifications in the Visa Waiver Program. See the Secretary’s November 23, statement [here](#).

2) DAPA Litigation goes to U.S. Supreme Court

On November 9th the 5th Circuit Court of Appeals located in New Orleans, upheld by a 2-1 vote, the Brownsville, Texas US District Court's decision which granted a temporary injunction barring implementation of DAPA and expansion of DACA. The US Department of Justice has stated that it will seek review in the US Supreme Court. Whether there will be a decision during the Obama presidency is unknown.

3) DHS Publishes "Notice" in the *Federal Register* Authorizing Employment Authorization for Nepali F-1 Students Experiencing Severe Economic Hardship as a Direct Result of the August 25, 2015 Earthquake.

The *Federal Register* Notice may be found [here](#). It notes that there are approximately 9,326 F-1 students enrolled in U.S. colleges and universities as of September 19, 2015. The rule discusses eligibility including being lawfully present in the U.S. in F-1 status on April 25, 2015, enrollment in an SEVP certified school, maintaining F-1 status, and "experiencing severe economic hardship, as a direct result of the earthquake's damage". The rule has a valuable Q & A which includes a discussion as to whether the F-1 student can also register for TPS for even broader work authorization, and drop below the required reduced courseload. The Q&A at pages 69240-69241 appears to say that if hardship employment has been approved, as well as TPS, and the student drops below 6 credits, reinstatement on the usual terms will be required. Assumedly, the same will be required for students working too many hours, and thus violating their F-1 status.

4) NSC Opines on 10 Day Requirement to Report Changes in Employment

The minutes of a September 10, 2015 Stakeholder call with NSC on student/school/other issues contained an interesting response to a question on the need to report changes in employment. The answer speaks for itself.

SEVIS policy requires students on OPT/STEM OPT to report to DSO within 10 days any changes in employment, including the change of employer or loss of employment, what if the student did not do so? What will be the consequences? Will it affect the student's status or his/her eligibility for future immigration benefits? Is this policy solely for the purpose of keeping track of the unemployment days of the student to make sure that the unemployed days did not exceed 90 days or 120 days respectively?

Answer: I-765's are reviewed on their merits as of the time of adjudication. Students and DSO's must provide all up-to-date information when submitting the application.

5) VSC Discusses Adjudication Training Methodology

The Minutes of a Vermont Service Center Stakeholder Meeting on September 18, 2015 has an interesting Q & A on just how examiners are trained:

In 2014, the VSC mentioned that it was implementing a coaching initiative as a part of its adjudications training. Can VSC comment further on these efforts? Has that initiative evolved? Are RFEs reviewed by a coach/mentor before issuance or just denials?

ANSWER 8:

The Business Division confirmed that the coaching initiative has been successfully implemented throughout the VSC wherein a trainee is assigned to a mentor who reviews the trainee's work in a sit-down, one-on-one context. This approach is more interactive than in the past and involves a robust exchange between the trainee and mentor. The mentor poses questions to the trainee, such as asking the trainee the basis for a decision and ensures the trainee has a proper understanding of the underlying legal framework and principles.

Unfortunately, nothing is mentioned about how agency culture and biases are transmitted, nor how the mentor is trained.

6) DHS Secretary Comments in Washington Post Report on DHS Digitized Records.

On November 11, 2015 DHS Secretary Jeh C. Johnson released a "Statement" responding to a *Washington Post* story published on November 9, which criticized DHS' efforts since 2006 to digitize its forms. The statement takes credit for "rebooting" the failed effort in 2012. Generally, the Secretary's spin tries to put a positive light to a process which has been widely criticized. The statement maybe found [here](#).

7) American Immigration Council Issues “Special Report” “Enforcement Overdrive”
A Comprehensive Assessment of ICE’s Criminal Alien Program

In short, in a 30 page study, the AIC found that 4 out of 5 supposedly criminal removals were for individuals with either no convictions or for an offence which the FBI does not classify as serious. The main reason for these statistics is that ICE gets plenty of funding for removals of serious criminal offenders. Therefore, if there is a removal, it must be serious.

The full report may be found [here](#).

Many thanks for your comments, your suggestions and your confidence in us, and for referring your students, scholars and faculty members.

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

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