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MEMORANDUM

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To: International Education Program Administrators

Spring is coming—and for many students so is life after F-1. As many of you know, our firm provides presentations at schools for international students without charge.

Please let us know, as soon as possible, if you would like us to come to your campus.

- 1) USCIS Postpones “Transformation”
- 2) State Department Increases Fees for Non-Immigrant Visas
- 3) NYC/ICE Removal Policies
- 4) SEVP Developments
 - a) SEVP Guidance for Students Whose School’s SEVIS Certification Has Been Automatically Withdrawn
 - b) Exchange Visitor Program Guidance Directive 2011-06
- 5) USCIS Reports on J-1 Waiver “Listening Session”
- 6) CBP Developing Domestic Partner Entry Policy Consistent with DOS and USCIS
- 7) Social Security Issues
 - a) Naming Conventions
 - b) Enumeration at Entry Program
- 8) DHS Ombudsman Now Requires Form DHS 7001 for EAD Inquiries
- 9) Immigration Policy Center Issues Fact Sheet on SAVE

1) USCIS Postpones “Transformation”

In a letter to stakeholders dated December 2, 2011, USCIS stated that, although the Electronic Immigration System (ELIS) will be accomplished in periodic releases, “...The post-development testing phase now underway is time consuming and challenging, as is characteristic of projects of this scale, complexity, and ambition. While we sought to roll-out the first release this month, our testing is not complete. We will inform you of our recalibrated timeframe for our first release after more testing is completed in the next few weeks.”

The stakeholder letter went on to thank the Office of the Inspector General and the General Accounting Office for recent reports and recommendations supporting the transformation process and sharpening USCIS’s “...ability to deploy sequenced releases in a cost-efficient and timely manner. We have concurred with and begun implementation of their recommended actions.”

The letter goes on to note that the agency’s past efforts had not gone as far as even a testing phase, and the agency congratulated itself on its “...hard work and tremendous dedication...”

In fact, in a November, 2011, GAO report subtitled “Immigration Benefits” and titled “Consistent Adherence to DHS’s Acquisition Policy Could Help Improve Transformation Program Outcomes”, after mentioning that it had been watching the transformation process since 2005, GAO found that:

USCIS has not consistently followed the acquisition management approach that DHS outlined in its management directives in developing and managing the Transformation Program. USCIS awarded a solutions architect contract in November 2008, in effect selecting an acquisition approach before completing documents required by DHS management directives. Specifically, DHS’s acquisition policy requires that prior to selecting an acquisition approach, programs establish operational requirements, develop a program baseline against which to measure progress, and complete a plan that outlines the program’s acquisition strategy. However, USCIS did not complete an Operational Requirements Document until October 2009, which was to inform the Acquisition Program Baseline and the Acquisition Plan. Consequently, USCIS awarded a solutions architect contract to begin capability development activities prior to having a full understanding of the program’s operational requirements and the resources needed to execute the program. GAO has previously reported that firm requirements must be established and sufficient resources must be allocated at the beginning of an acquisition program, or the program’s execution will be subpar. The lack of defined requirements, acquisition strategy, and associated cost parameters contributed to program deployment delays of over 2 years. In addition, through fiscal year 2011, USCIS estimates it will

have spent about \$703 million, about \$292 million more than the original program baseline estimate.

Apparently, USCIS continues to manage the program without specific acquisition management controls including reliable schedules. Whether it can meet future schedules is problematical. It would appear that USCIS has been putting the cart before the horse.

Perhaps, all that extra money is for the Service's efforts to increase jobs, which it has touted extensively.

In any event, it is to be hoped that USCIS won't hire the same consultants ICE did for SEVIS II (or even for SEVIS, for that matter).

2) State Department Increases Fees for Non-Immigrant Visas

The "Federal Register" of December 6, 2011 carried a "Final rule" setting forth new nonimmigrant payment schedules. Most non-petition-based nonimmigrant visas, which include the F and J, will increase from \$131.00 to \$140.00. The, H, L, O, P, Q, and R nonimmigrant visas will cost \$150.00.

The "Proposed rule" was originally published on December 14, 2009. The "Final rule" became effective on December 6, 2011.

3) NYC/ICE Removal Policies

On December 1, 2011, New York City Mayor Michael Bloomberg signed a new law regarding immigration detainers on persons arrested in New York City. In effect, those arrested in New York City who are undocumented and without past or pending misdemeanors and or felonies, or prior deportation or removal orders will not be held beyond the time needed to conduct a database search. This search is to determine if they have been convicted of a crime, are a defendant in a pending criminal matter, or have an outstanding criminal warrant in New York State, or in any other US jurisdiction, or have been identified as a known gang member or as a possible match in the terrorist screening database, or if there is an outstanding warrant of removal from ICE, or if he or she had previously been the subject of a final removal order by an Immigration Court. If the individual was not covered by these categories, the New York City Department of Corrections will not notify US immigration authorities of their release. This new law is scheduled to take effect 120 days from the date of signing, which is March 30, 2012.

The New York City law should also be seen in the context of ICE policy priorities regarding deferral of removable individuals. ICE recently stated that in regard to potential Dream Act eligible individuals:

This office is very generous in granting stays of removal to students. If there is not a criminal history, they will generally be granted, particularly if the individual came as a young child and is now an adult who has a documented history of, and evidence of continued attendance at a University or College.

ICE policy since New York State Governor Cuomo's suspension of the Secure Communities in New York State notes that:

The Governor's order contains an exception for those suspected of criminal activity so when Secure Communities is implemented in New York City... [The Governor's Order]... should not restrict the program.

The local [ICE/Secure Communities] office covers 14 counties, Secure Communities is operational in all 9 counties other than the five boroughs.

In order for Secure Communities to affect an individual they must have been arrested for a fingerprintable offense. If an individual is pulled over for driving with a taillight out or driving without a license unless they are detained and fingerprinted their information will not come up through secure communities as the program matches fingerprints. Only if someone is arrested and biometrics are taken as they are booked into police custody do they get run through Secure Communities. A routine police stop on the side of the road, where no arrest is made on local charges, will not result in a "Secure Communities" search.

4) SEVP Developments

a) SEVP Guidance for Students Whose School's SEVIS Certification Has Been Automatically Withdrawn.

On December 13, 2011 NAFSA published December 1, 2011 guidance from SEVP regarding students who are attending a school which has had its certification automatically withdrawn as a result of the school recertification process. The guidance first suggests: "Don't panic!" and that the student should then contact the DSO, and finish the current semester, and if the school has been reinstated continue enrollment. If the school remains withdrawn the guidance provides three courses of action:

- 1) Depart the United States;
- 2) Transfer to another SEVP certified school; or,
- 3) Change to another nonimmigrant status.

Considering these alternatives, and the time needed to be accepted to another school or to change to another status, you might consider advising the student that panicking is totally appropriate.

b) Exchange Visitor Program Guidance Directive 2011-06

On December 20, 2011 NAFSA published a December 15, 2011 Exchange Visitor Program Guidance Directive 2011-06 which provides “guidelines for maintaining SEVIS records for J-1 and J-2 nonimmigrants.”

The guidance may be found [here](#).

5) USCIS Reports on J-1 Waiver “Listening Session”

On December 21, 2011 USCIS published an “Executive Summary” of a “Listening Session” teleconference it had held jointly with the State Department on November 2nd regarding public concerns about the two year home country residence requirement under section 212(e) of the Immigration Act. The teleconference “sought individual stakeholder feedback,” not “...group or consensus advice. In other words, it provided a chance for the public to vent – but not to be heard. The summary contains a few policies of interest:

J-1 Waivers for European Countries

Participants questioned whether someone who is from a European Union (EU) country can perform their two-year physical residence requirement in another European Union country. USCIS and DOS stated that the physical presence requirement must be completed in a persons’ own home country. Section 212(e) requires that such person reside and be physically present in the country of his nationality or his last residence for an aggregate of at least two years following the departure from the United States. A participant then expressed concern that some U.S. Embassies are giving incorrect information that a person could live in any EU country and fulfill the requirement.

...

One stakeholder questioned whether a J-2 son or daughter remained subject to the two-year foreign residency requirement if his or her J-1 parent departed the country and completed their two-year residency requirement which the J-2 son or daughter remained in the United States (presumably under a different nonimmigrant category) and later married a U.S. citizen. The Department of State responded that the J-2 son or daughter would still need to apply for a waiver of the two-year foreign residence requirement and that they would also need a letter from

Department of State to act as an Interested Government Agency (IGA) on their behalf.

If a J-1 visa holder did not apply for the waiver, what additional documentation does a J-2 visa holder need to apply for a waiver on his or her own? Department of State responded that the individual would need the following items:

- o Birth Certificate
- o The appropriate fee
- o DS-2019 of the J-1 visa holder
- o DS-3035
- o and a letter requesting Department of State to act as an Interested Government Agency (IGA) on their behalf

In other words, the agencies were more interested in continuing arduous, time consuming and expensive bureaucratic hurdles in order to protect their turf – than interpreting the law and regulations to ease and benefit international education. But, then again, the session was for listening, not to obtain advice.

The summary provided useful links to the DOS website links concerning J-1 waivers. First go to www.travel.state.gov and then link to:

- How to apply for waivers
- Frequently asked questions
- Information on processing fees
- Estimated processing timelines
- Status check system for waiver case
- State contact information

Additional contact information may be found at:

Department of State

For inquiries such as making corrections after you have submitted an application, getting copies of forms such as the GS 3035, and determining if indirect government funding was received please contact the Department of State.

Email: fmjvisas@state.gov

Phone: 202-663-1225

Fax: 202-663-2868

USCIS

For general questions or concerns that were not answered during the teleconference please contact USCIS.

Email: public.engagement@dhs.gov

6) CBP Developing Domestic Partner Entry Policy Consistent with DOS and USCIS

It has been reported by AILA that CBP has confirmed that if a household member is a domestic partner or other regular member of a household who seeks to enter the US on a B-2 visa she or he may be admitted for up to one year. The applicant should request the one year entry, as the usual procedure is to permit entry for only six months. The couple/household members should be able to confirm the relationship and, it is suggested that they travel together. If the parties travel separately, the principal's status must also be proven.

This policy, apparently, would not only apply to same sex partner relationships, but to parents of F-1 students or to elderly parents, among others.

7) Social Security Issues

a) Naming Conventions

It was reported by AILA, in regard to naming conventions, that the Social Security Administration relies on the name set forth on the immigration documents, unless there is a subsequent legal change.

b) Enumeration at Entry Program

For several years the Social Security Administration has been registering arriving immigrants for Social Security cards upon their entry into the United States. The Social Security Administration had anticipated expanding that program to nonimmigrants but has delayed doing so pending activation of USCIS' Transformation. SSA enumeration of nonimmigrants is, reportedly, being built into USCIS Transformation.

8) DHS Ombudsman now Requires Form DHS 7001 for EAD Inquiries

The Department of Homeland Security Ombudsman has been having a positive impact upon USCIS over the last several years by studying and suggesting procedural changes and reforms. The Ombudsman's office will also accept casework from individual applicants. However, on December 21, 2011 the Ombudsman's office announced that they would only accept an inquiry regarding an Employment Authorization Document which is outside of normal processing times if a Form DHS 7001 is filed. In October, 2011 an Online Case Assistance system was implemented which provides for same-day assistance of a case problem. This online system, apparently, is useful in other than non EAD cases.

A description of Ombudsman Case Assistance may be found [here](#).

9) Immigration Policy Center Issues Fact Sheet on SAVE

The Immigration Policy Center has issued a Fact Sheet regarding the “Systematic Alien Verification for Entitlements (SAVE) Program.” The Fact Sheet is a useful description of SAVE and what it can and cannot do. For example, it cannot verify if an individual is unlawfully present in the U.S. The Fact Sheet also discusses how SAVE and E-Verify are not interchangeable. The Fact Sheet may be found [here](#).

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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