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January 6, 2014

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MEMORANDUM

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To: International Education Program Administrators

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1) Happy New Year Ruminations

For our first memo for the year, we want to wish everybody a Happy and Healthy New Year and to look forward to all the good things that will happen in 2014.

We look back on 2013 and think of some of the things we have missed. Since, after all, we are writing a newsletter regarding immigration events the first thing that comes to mind is the lost opportunity to have a new immigration law.

Perhaps, as they used to say in Brooklyn: “Wait till next year”- which is now this year.

2) VSC Announces Change Caused By Advancements in Technology

On December 5, 2013 the Vermont Service Center advised that “...due to changes in technology within the VSC, Requests for Evidence (RFEs) issued by the VSC will no longer be printed on blue stock paper, but as of Dec 9, 2013, will instead be printed on light yellow paper.” Unfortunately, VSC did not specify the specific nature of the technology change nor why it caused a modification in paper color.

3) Will the Philippines get TPS?

On December 16, 2013 the Republic of the Philippines made a formal request of the United States Government to designate that country under Temporary Protected Status (TPS). The request was made as a result of the tragic devastation caused by Typhoon Haiyan which killed more than 6,000 people, directly displaced more than 4 million, and affected more than 12 million people. The request is backed by more than 200 Filipino-American organizations, as well as members of the Senate, House of Representatives, the Catholic Church, as well as other NGOs. It would be unusual for a country to make a formal request,

if it was known in advance that the request would be rejected. However, this is speculation. Four other countries have been provided with TPS relief after major natural catastrophes. These include El Salvador, Haiti, Nicaragua, and Honduras. The grant of TPS would permit eligible Filipinos who are presently in the US to remain and work here while rehabilitation efforts are in process. It is not known if the grant of TPS would be limited to individuals from the specific area affected by the typhoon and whether the storm's effect upon them would need to be direct or merely indirect. It is unknown if or when an announcement will be made by Department of Homeland Security.

4) Must OPT Work be for Pay?

As many of you may have become aware the Nebraska Service Center has been rejecting F-1 STEM extension OPT requests if the students' participation in OPT was as an unpaid intern. Although prior OPT policy guidance from 2010 advised that unpaid internships were acceptable for employment, NSC has without notice interpreted that a provision in the 1986 Act (IRCA) defining employment as "working for wages or other remuneration" requires that employment be for actual financial income. NSC has overlooked that in the past, "remuneration" has been held by USCIS to include other than financial payments. NAFSA is presently in discussion with the NSC on this issue. In any event, until this issue is resolved students should be advised to develop backup options.

5) Update on University of Northern Virginia

On December 2, 2013 ICE announced that as of October 1, 2013 the approval for attendance of nonimmigrant students at the University of Northern Virginia had been withdrawn. If an individual has failed to transfer or depart the US by November 25, 2013 the SEVIS record has been terminated. ICE directed any students with questions to the SEVIS Response Center at 703-603-3400 or email

at sevp@ice.dhs.gov. The notice also mentioned “If your record has been terminated, you must contact the SEVIS Response Center to manually transfer your record to your new school in order to file for reinstatement with USCIS”.

6) CBP Releases New Rule Defining “Members of a Family”

On December 18, 2013 CBP published a “Final rule” defining “Members of a Family” for purposes of filing customs declarations. The rule becomes effective January 17, 2014. Defining who are members of a family for customs purposes affects the eligibility of returning residents to the US to file a single customs declaration for a family, and get the benefit of grouping exemption limits. The new rule expands membership of a family to include domestic relationships which includes: foster children, stepchildren, half-siblings, legal wards, other dependents and individuals with an *in loco parentis* or guardianship relationship. “Domestic Relationships” also include two adult individuals in a committed relationship wherein the partners share financial assets and obligations, and are not married to, or a partner of, anyone else, including, but not limited to, long-time companions, and couples in civil unions or domestic partnerships. In other words, CBP is now recognizing a modern and functional definition of what is a family.

7) DOS Releases FY13 Waiver Statistics

The Department of State has announced its statistics regarding Section 212(e) J Waiver recommendations as well as advisory opinions for all categories of waivers. The chart follows:

INA 212(e) WAIVER RECOMMENDATIONS – FY 2013

WAIVER BASES	FAVORABLE	UNFAVORABLE	TOTAL
No Objection Statement	4269	119	4388
Exceptional Hardship	228	50	278
Persecution	31	6	37
Interested Government Agency - Physician	111	0	111
Interested Government Agency – Other	115	6	121
State Department of Health	1033	0	1033
TOTAL	5787	181	5968

INA 212(e) ADVISORY OPINIONS – FY 2013

SUBJECT	NOT SUBJECT	TOTAL
662	703	1365

Many thanks for your comments, your suggestions and your confidence in 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.

Note (After all, we are lawyers!): The information provided in this Memorandum is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Readers must not act upon any information without first seeking advice from a qualified attorney. Neither the publisher, nor any contributor is responsible for any damages resulting from any error, inaccuracy, or omission contained herein.