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**MEMORANDUM**

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To: International Education Program Administrators

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1) Supreme Court Rules on DOMA

As we have all heard, DOMA- The Defense of Marriage Act – is dead. The Supreme Court effectively killed it by a 5-4 vote on June 26th. Later that day Janet Napolitano, the Secretary of Homeland Security made this statement:

"I applaud today's Supreme Court decision in United States v. Windsor holding that the Defense of Marriage Act (DOMA) is unconstitutional. This discriminatory law denied thousands of legally married same-sex couples many important federal benefits, including immigration benefits. I am pleased the Court agreed with the Administration's position that DOMA's restrictions violate the Constitution. Working with our federal partners, including the Department of Justice, we will implement today's decision so that all married couples will be treated equally and fairly in the administration of our immigration laws."

What this means is that we should, hopefully, expect that USCIS, USCBP, and USICE will all, shortly, be issuing directives (be they policy statements, interim rules, or whatever, etc.) which will actually permit married same sex couples to obtain immigration benefits. There will be little public patience with government foot dragging on this very public issue – after the enthusiasm of the moment dissipates.

What, we hope, will happen is that, soon, USCIS will begin accepting and processing petitions for green cards by same sex marriage partners, change of derivative status applications to F-2, H-4, (and to categories such as L-2 and E which permit spouses to work) among others, and admit married same sex derivative beneficiaries to the U.S. in the same way that straight derivatives have always been admitted.

Hopefully the transition will be seamless.

2) DOS Discusses F-1 Visa Interview

We recently had the opportunity to attend a meeting with the Department of State and some local DSOs. At this meeting, State Department representatives shared many observations with us about their responsibilities, the nonimmigrant visa process, and their perspectives.

Specifically, with regard to the nonimmigrant visa interview they passed on some particularly candid nuggets of information. The representatives stated that they largely have a paperless process at this point. They also noted that they are allotted approximately two minutes per interview. Thus, due to time constraints, they do not have enough time to review papers and documents. Accordingly, the interview is mostly a conversation. In these critical two minutes, the applicant should be able to state why they wish to attend the school they wish to attend, what they plan to do after they complete their studies, and how they plan to pay for the time it takes to complete those studies – not merely just the first semester or year. The DOS representatives noted that oftentimes students are so excited about going to the United States, that they focus their interview on talking about the wonderfulness of the U.S..

While their excitement is understandable, it is important to remind students that they must demonstrate an intent to depart the U.S. after their studies. If applicants gush over how great the U.S. is and are dismissive about their home country, the officer may find justification for denying them the visa under the 'intending immigrant' provision of 214(b). As part of the interview, the officer may ask the applicant about family in the U.S. It is perfectly fine to have some family members living in the U.S., but the applicant should also take the time to discuss family members living in their home country, or in other countries. It was also reported that oftentimes the applicants do not know what their parents do for a living, and instead just point to a bank statement.

As mentioned earlier, DOS is focused more on the conversation rather than supporting documents. The applicant should be able to discuss the source of funds in addition to providing the sources at the interview. DOS also mentioned that while its operations are generally paperless, the same cannot be said for DHS. Accordingly, the bank statement

documents are not worthless; we just need keep in mind who values them so that students can use them appropriately and effectively.

3) DHS Extends Employment Authorization for Syrian F-1s

The “Federal Register” of June 17, 2013 contained a “Notice” extending the suspension of certain F-1 employment requirements for students from Syria who are experiencing severe economic hardship as a result of the Syrian civil war. The extension permits F-1 Syrian students to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course loads while remaining in F-1 status. The Syrian F-1 student had to be present in the U.S. on or before April 3, 2012 in order to be eligible. She or he must continue to be enrolled as an F-1 student, and must continue to experience severe economic hardship as a result of the Syrian civil war. The “Federal Register” notice may be found [here](#).

4) TPS Extended for Syria

The “Federal Register” of June 18, 2013 carried an updated “Federal Register” posting of June 17<sup>th</sup> regarding the extension and redesignation of Syria for TPS for a period of eighteen months from October 1, 2013 through March 31, 2015. As Syria is being redesignated as well as extended, additional individuals, who have been continuously residing in the United States since June 17, 2013, may obtain TPS, if otherwise eligible. The extension and redesignation may be found [here](#).

5) Form I-539 Extension Notice Contains Surprises

The “Federal Register” of June 13, 2013 carried an “Agency Information Collection Activities: Application to Extend /Change Nonimmigrant Status, Form I-539; Revision of a Currently Approved Collection.” USCIS is required to request comments from the general public and other Federal agencies upon a proposed extension of a currently approved collection of information under the Paperwork Reduction Act of 1995. Comments will be accepted until August 12, 2013. This notice also contains several changes in the form, and expanded new information regarding the form’s instructions.

It was noted that there are approximately 117,907 total respondents using the paper I-539 which requires 1.88 hours per response. There are also approximately 16,385 applicants using ELIS which requires 1.75 hours. Biometrics processing was required of 134,292 total respondents with a burden of 1.17 hours. Yes, the total is correct for the paper plus ELIS applications. It is also interesting to note that less than eight percent of applicants have used ELIS – despite all of the USCIS publicity.

According to a resource paper in the NAFSA.News of June 25<sup>th</sup>: “The principal purpose of the proposed changes is to incorporate data collection that reflects the new electronic I-94 procedures that were implemented at all air and sea ports of entry in May, 2013. USCIS has also proposed changes to the Form I-539 instructions regarding I-94 documentation, as well as several other changes USCIS hopes will clarify the evidence and documentation requirements for the various benefits for which Form I-539 is used, such as M-1 practical training, F-1 reinstatement, and H-4 filings. The “Tables of Changes” linked to above, show how the current form and instructions would be amended by the proposed changes. When commenting, consider the following:

- Do the proposed Form I-94 fields on the Form I-539 achieve what USCIS is trying to achieve? Do you have suggestions for how they might improve the fields or field labels?
- Are the proposed Form I-539 instructions complete, clear, and unambiguous? Do you have suggestions for how they might improve the instructions?”

The instructions to Form I-539 have also been amended with some interesting new material regarding reinstatement. Specifically, the new instructions say:

**F-1 Reinstatement**

In addition to the above documents you must also submit evidence that your violation of status resulted

from circumstances beyond your control or that your violation related to a reduction in your course load that would have been within a Designated School Official's (DSO's) power to authorize, and that failure to approve reinstatement would result in extreme hardship to you.

If you have been out of status for more than 5 months at the time of filing your request for reinstatement you must also provide evidence that your failure to file within the 5 month period was the result of exceptional circumstances and that you filed our request for reinstatement as promptly as possible under these exceptional circumstances.

This new material appears to provide useful and helpful clarifications.

The instructions for "M-1" Reinstatement are also interesting as they appear to eliminate the prohibition against changing to F-1 status or to any H status if the M-1 training would have helped the applicant to qualify for H status. The new M-1 reinstatement instructions are otherwise similar to those for F-1.

If this analysis is accurate, it would eliminate restrictions found in the original M-1 regulations which were never authorized by statute. As USCIS regulations at 8CFR103.2(a)(1) incorporate a form's instructions into specific Service regulations, these changes appear to change long standing, but overreaching regulations. (See: 8CFR248.1(d), 8CFR 248.1(c)).

6) "Academic Community Engagement" Scheduled for July 18, 2013 at Nebraska Service Center

On June 20<sup>th</sup> USCIS published a "Meeting Invitation" for "an academic community engagement to be held on Thursday July 18, 2013 8am-4pm Central time at the Nebraska Service Center in Lincoln, Nebraska. The meeting is in person only and will

discuss student and academic related immigration issues.” Representatives will be present from NAFSA, ICE, SEVP and various designated school officials (DSO) will be present to share information and answer questions.” Topics for discussion include Form I-140, Immigrant Petition for Alien Worker; I-765, Application for Employment Authorization; I-485, Application to Register Permanent Residence or Adjust Status; Immigration trends in higher education; and E-filing and SEVIS-CLAIMS interfaces.

A tour of the Nebraska Service Center will follow the information sharing session. A copy of the invitation can be viewed [here](#). The invitation includes instructions on how to reply to attend.

7) A New Immigration Law?

Senate Bill S.744, the “Border Security, Economic Opportunity, and Immigration Act” passed the Senate on June 27<sup>th</sup> but immigration reform continues its arduous and torturous progress through the aisles of Congress and waits to be born. A compromise permitted the bill to be enacted in the Senate, although with delayed and restricted Registered Provisional Immigrant (RPI) provisions which will be triggered by heavy and difficult southern border enforcement provisions (The Northern border does not appear to be a problem, for unexplained reasons.)

The effort now goes to the House of Representatives where all bets are off. Everything is speculation. Although there has been much maneuvering and posturing in the House, little constructive effort has gone into actually introducing a comprehensive bill. Although the present membership of the House is a result of gerrymandering, perhaps the efforts of labor, business, evangelicals, and university communities within those districts will have a positive impact. Perhaps, individual pieces of the Senate bill will be enacted, together with other pieces originating in the House, and, thereafter, be taken up by a Senate/House Conference Committee which will then prepare a compromise bill which will go back to either house for a vote which might come about at the same time that Congress is arguing about the budget, and about credit limits. Nothing about this process is preordained.

8) NAFSA Region X

On June 25, 2013 NAFSA Region X held its New York/New Jersey Downstate meeting at Pace University. Michael Goldstein and Lucy Cheung gave a presentation “Comprehensive Immigration Reform: A Breakdown of the Senate’s Proposed Bill” in which they summarized many key points and changes proposed in the new bill. For those who are interested, slides from the PowerPoint presentation can be found [here](#).

John Oliver of “The Daily Show with John Stewart” had a slightly different, albeit amusing, take on the legislation, which can be found [here](#) (please note some parts are a bit crude). The graphic at the end of the clip is particularly interesting.

*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.*

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