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MEMORANDUM

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To: International Education Program Administrators

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1) FY 2013 H-1B Cap Filled on June 11, 2012

On June 12, 2012 USCIS announced that on June 11, 2012 it had received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year 2013. On June 7, 2012 USCIS had already reached the 20,000 cap for the advanced degree exception. Subsequent to a lottery for all petitions received on June 11th, all other cap subject H-1B petitions are being rejected and returned to the petitioners.

2) NAFSA Region X Downstate NY/NJ Conference: Gov't Q & A Notes

On June 27, 2012, we attended the Region X Downstate NY/NJ Conference held at Bergen Community College. Representatives of ELIS, SEVP, and CBP appeared at the Government Q & A session chaired and organized by our very own Lucy Cheung. SEVP appeared by conference call. The following are some notes from the session.

Transformation and ELIS Updates:

ELIS went into effect on May 22 regarding form I-539. From that date through June 27, approximately 400-500 applications had been adjudicated. The first one was approved.

Changes to ELIS will be scheduled every 4 months.

Major points of concern the ELIS team is aware of and is working on are:

- I-20s and DS2019 – Stamps Not Required:

The ELIS representative advised that I-20s/DS2019s are not status granting documents and, therefore, they do not need to be stamped to be valid. Although ICE is currently continuing to stamp, USCIS is encouraging them not to. Similarly, local DMV and SSA offices should not require stamps. If the local offices insist on stamps, ELIS team members will directly contact them and instruct them that stamps are not required. DSOs can advise ELIS members of local offices that failed to register this clarification of policy by contacting ELIS on their website via a feedback section at uscis-elis-feedback@uscis.dhs.gov. The ELIS office will also post an I-20 FAQ online soon.

- Uploading Documents & Processing Times:

The ELIS representative advised that all documents should be uploaded before submitting payment for fastest processing time. Once payment is submitted the applicant will no longer be able to upload documents. They will

have to wait for an RFE for an opportunity to complete their document uploading.

- I-94 End Date:
Currently, the ELIS program does not recognize an I-94 end date of D/S. Leave it blank for now.
- “Unauthorized work”:
Also, the ELIS program does not recognize that OPT is authorized work and issues some very alarming language to applicants who properly note that they have worked while in school. ELIS team members advise that they are aware of this massive problem and that it is highly prioritized on a list of thousands of updates. They expect this issue to be corrected within 4-8 months. In the meantime, applicants can use an additional page to provide an explanation that the OPT work is/was indeed authorized.
- DSO ELIS Accounts:
The ELIS representative advised with finality that there is no plan for DSOs to have ELIS accounts of their own. The only way a DSO will be able to have an account is if that person wishes to become an accredited representative and take legal responsibility for the student. If so, the DSO can hit the submit button (rather than the student) if they sign in the ‘preparer box’ as a ‘preparer’. It appears this decision has been made from those higher up the Department of Homeland Security chain. If DSOs are to receive ELIS accounts and access, it will involve convincing DHS to change their current view of the role of DSOs.

CBP Updates:

In responding to a question, CBP advised that they have had no direct contact with the ELIS office (i.e. still no intra-agency communication). Apparently they have only had access to the same public information we do, as well as access to the CLAIMS database.

SEVP Updates:

- SEVIS II:
Advised that they are currently “re-baselining” the system and obtaining outside review of the project to determine the lifetime costs. After that stage is complete they will hire a developer. Used the analogy that they are like an architect, the clay model is finished, and they are now getting ready to draw up the blueprint.

It appears that whatever system was previously in the works has been abandoned, and that SEVP has started from the beginning. It could be years before we see a functional (whatever that means) SEVIS II.

An SEVP representative also commented that SEVIS II should not drive the regulations, but the regulations should drive SEVIS II.

- Study In The States:
It sounds like they are re-visiting the regulations to help reach their stated goals.
- Recertification:
SEVP advised that the biggest problem is instructional sites that are not on campus. Any site that is not "on campus" must be added.
- SEVIS Security:
SEVP reminds DSOs not to share passwords. SEVP stated that they view doing such is a violation of the regulations and when pushed even quoted a specific regulation they believe supports their view. They note that while the numbers are small, such violations are up 50% this year.
- Processing Times:
SEVP advised that the process of adding a DSO should take about 2-3 weeks, and that the process for adding a new program should be about 6 months.

3) Submitting an I-20 with ELIS

On June 1, 2012 USCIS released a Policy Memorandum (PM-602-0065) which advised that submission of forms I-20 or DS-2019 filed in support of an application to extend/change non-immigrant status (I-539) will be acceptable using the current paper filing or electronically scanned, if the I-539 is an ELIS filing provided that the I-20/DS-2019 is properly executed. The memo may be found [here](#) through NAFSA.

USCIS takes the position that the I-20 and the DS 2019 are not "status documents" and that, therefore, they need not be stamped. ELIS representatives swear that they have notified all state DMV's and U.S. Social Security about this decision. An ELIS Q&A on this concern may be found [here](#).

4) Accreditation of English Language Training Programs Act FAQ

A draft of Frequently Asked Questions (FAQs) has been developed by SEVP in response to the complex nature of the Accreditation Act. It was published on the DHS website on Friday June 29, 2012 and can be found [here](#). The site states that SEVP will welcome comments from the academic community on these drafted FAQs from June 29, 2012 through Friday July 13, 2012. That's right; SEVP is giving you two summer weeks to let your voice be heard.

5) Suggestions from the U.S. Consulate in Rome

On May 24, 2012 a meeting was held at the U.S. Embassy in Rome, Italy between the AILA Chapter in Rome and the nonimmigrant visa unit of the U.S. Consulate. Among various issues discussed were:

- The typical waiting time for a non immigrant visa appointment in Rome is five days or less with wait times usually growing near the end of the holiday season, as well as in July and August because of the large number of student visa applicants. The student visa applicants are eligible to request emergency appointments, if no other appointments are available prior to their departure.
- F and J applicants should appear at their interviews with properly completed I-20/DS-2019, and SEVIS payments. Any additional documentation required by the specific F or J programs, such as an internship training plan, should also be available. Evidence of financial support should also be provided.
- Although the Consular Officers would not disclose why a case would be undergoing administrative processing, the response times vary greatly depending on the volume of cases worldwide undergoing this process. The Consulate advised that they check administrative processing responses on all pending cases twice a day, and contact the applicants whose cases have been completed within one business day thereafter.
- The post also advised that SEVIS information is provided both to the Consulate and by a direct link in the non immigrant visa application.

6) U.S. Consulate in London will Have Non-immigrant Appointments Available in July and August

On June 7, 2012 it was announced that the NIV unit of the U.S. Consulate in London would have NIV slots available between July 1st and August 17th through the Embassy's Operator Assistant Visa NIV Appointment Booking Service during the third week of June with the number of appointments being limited daily to 200 with priority given to F-1s and J-1s, as well as petition based visa categories. A limited number of B-1/B-2 appointments will be available, but B-1/B-2 visa applicants who were denied in the last six months would only be permitted an appointment after August 17.

According to some British friends the Olympics held during this period represents the evil that Tony Blair did which lives after him.

7) Senator Grassley Attacks OPT

On May 31, 2102 Senator Charles E. Grassley (R, Iowa) sent a letter to the U.S. Government Accountability Office (GAO) regarding concerns that he has with Optional Practical Training (OPT). He felt that OPT was created without the advice and consent of Congress and only by regulation and that there have been reports of abuse and a lack of controls and oversight by the federal government. He asked the GAO to "fully investigate the use of OPT, including who uses it and how students are tracked, determine what weaknesses exist, and suggest ways to improve the procedures and policies that govern its administration." He noted that, on average, between two and three percent of applications submitted were denied. To Senator Grassley this denial rate represents the need for greater oversight, not a presubmission winnowing out of deniable applications. He further claims that: "reports suggest that the OPT program could be full of loopholes with few controls in place to determine if students are actually working, working where they claim to be, or working in their field of study. It appears that higher educational institutions ultimately decide if a student should obtain OPT, putting them to work without actually knowing the employer or requiring proof of employment. I would like to know more about the lines of communication that exist between the various branches within the Department and between the Department and schools who issue OPT to students."

Senator Grassley appears to be questioning the validity of certain STEM fields as well as the lack of wage and worker protections for Americans. He also goes on to note: "It's difficult to know how many potential terrorists have exploited the OPT program to remain in the United States, but we do know that Faisal Shahzad, a foreign national from Pakistan, used the OPT program prior to attempting to attack citizens in Times Square, New York. Reports suggests that Shahzad was issued OPT and later applied for an H-1B visa, and eventually citizenship. It is my understanding that Faisal Shahzad studied

general business at the now defunct Southeastern University, and was granted OPT status after claiming employment with a temporary staffing agency. Using OPT simply to remain in the United States should be a concern to Homeland Security officials.” He goes on to request information regarding guidance given in the past to colleges and universities with regard to approving OPT, and the restrictions, if any, placed on the educational institutions to verify the request and offer of employment.

The Senator goes on to bullet point his issues:

- What potential risks exist in the OPT program, and is it being administered securely and effectively by the Department of Homeland Security?
- What measures, if any, has the Department instituted to prevent and detect fraud and abuse in the program, and what steps does the Department take to ensure the success of these measures?
- What controls has the Department implemented to ensure that educational institutions are complying with OPT requirements, and what actions does the Department take to ensure compliance with these controls?
- What guidance, if any, does the Department provide to educational institutions regarding their oversight responsibilities in OPT?
- How do employers identify students in OPT for employment opportunities?
- What process did the Department undertake when expanding the STEM fields in May 2012 to ensure that it was complying with its own criteria for including new degree programs on the list?
- Does employment with a temporary staffing agency make a student eligible for OPT, and if so, how is such employment directly related to a student's area of study?

The Senator's issues appear to be somewhat curious just now when leaders of both parties are discussing how to “staple a green card to STEM diplomas.” His populist attack on OPT can only result in losing these individuals whose knowledge and expertise has been learned through our university system.

Considering the fact that Senator Grassley's record appears to demonstrate that he has never met a foreigner who he has liked, or viewed any immigrant program whether immigrant or non immigrant with favor, I would respectfully nominate Senator Charles E. Grassley of Iowa, the ranking minority member of the Senate

Committee on the Judiciary for the Senator Theodore G. Bilbo Memorial Award for his contributions to prejudice and xenophobia.

8) ICE Enforcement

◆ Student Visa Fraud Ring Arrested in N.J.

On June 5th the U.S Attorney's Office for the District of New Jersey in Newark announced that federal agents had arrested eight of nine people charged for their alleged participation in a wide spread foreign student visa fraud. Three search warrants, including two at school campuses located in Iselin and Jersey City were executed. The defendants have been charged with conspiracy to obtain and use phony visas, as well as conspiracy to conceal illegal aliens. The fraud revolved around a scheme which used a company to operate as an intermediary between students and various academic institutions. The company recruited students in exchange for a referral fee, and assisted students with the application process. The perpetrators provided the foreign nationals with the documents needed to obtain F-1 visas, for a fee, without verifying any of the applicant's information. The schools are identified as the American Health and Technology Institute, formerly known as PC Tech Learning Center, LLC which had been certified by SEVP.

◆ 40 Overstays, Status Violators and F-1s Arrested in Dallas ICE District

According to the "North Texas e-News" of June 13, 2012 ICE made forty arrests during a twelve day student visa enforcement operation in north Texas and Oklahoma. The article mentions that forty immigration status violators, visa overstays and foreign students were arrested for violating the conditions of their non immigrant visas. The article was in terms of counter terrorism and the need to maintain the integrity of the student visa program. The article mentioned that there were 348 SEVP certified schools and 32,896 foreign students within the ICE area of responsibility in Dallas.

Considering the fact that 40 violators were apprehended for various reasons and that there was no mention on how many of these were students, it would appear that the institutions in the Dallas area are doing a pretty good job.

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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