

**LAW OFFICES OF  
EUGENE GOLDSTEIN AND ASSOCIATES  
150 BROADWAY, SUITE 1115  
NEW YORK, NY 10038  
212-374-1544  
Fax 212-374-1435  
[EGLAW@AOL.COM](mailto:EGLAW@AOL.COM)  
<http://www.eqlaw-group.com>**

June 3, 2014

**Eugene Goldstein**

**Lawrence Goldstein  
Lucy G. Cheung  
Michael J. Goldstein**

**MEMORANDUM**

Jacqueline Singh  
Ana Peña  
Legal Assistants

To: International Education Program Administrators

- 1) H-1B Issues
  - H-1B Cap Update
  - USCIS Issues “Notice of Proposed Rule” on Employment Authorization for Certain H-4 Spouses
  - USCIS Issues “Notice of Proposed Rule” Harmonizing H-1B1 and E-3 Categories with H-1B Regulations
- 2) Liason Meeting Revelations
  - USCBP on Automatic Visa Revalidation
  - Nebraska Service Center Student/School/Other Product Line on Reporting Students Unlawfully Working; Performing Self-Employment
  - Texas Service Center Discusses “Directly Related” to Field of Study on I-20; OPT Eligibility
- 3) State Department Requests Comments on DS-2019 Revision
- 4) Vermont Service Center “Stakeholders Newsletter,” Spring 2014
- 5) SEVP Report on Quarterly Statistics
- 6) USCIS Extends Registration Period for Haiti TPS

1) H-1B Issues

- H-1B Cap Update

The first week in April was H-1B filing season. USCIS has reported that it received approximately 172,500 H-1B petitions to fill the approximately 85,000 H-1B slots. USCIS has advised that all winners have already received filing receipts and that petitions which have not been selected will be returned. Those selected were data entered as of May 2, 2014. According to an AILA/SCOPS Teleconference Agenda of May 21, 2014 “USCIS is currently performing queries to identify non-selected cases for rejected cases.” It anticipates that it will start returning these rejected cases around the end of May, or the first week in June. USCIS has advised that it will have a processing goal of sixty days-unlike last years’ processing period of five months. However, because of the large number of cases receipted on the same day, it was advised that there may be some delay.

- USCIS Issues “Notice of Proposed Rule” on Employment Authorization for Certain H-4 Spouses

On May 12, 2014 USCIS published a “Proposed rule” in the Federal Register which, in a very limited context, would provide employment authorization to H-4 dependant spouses of principal H-1B nonimmigrants. H-4 dependant spouses would be eligible for employment authorization if the H1-B is the beneficiary of an approved I-140 immigrant visa petition in the employment category who was been granted an extension of their H-1B after their usual six year H-1B status has expired. In effect, this extension will be limited to spouses of Indian and Chinese (and perhaps, some Philipinos and Mexicans) H-1B applicants, many of whom are researchers or on teaching faculties on US college campuses or medical institutions. Comments are required to be received by July 11, 2014.

USCIS has been under serious pressure by the administration to expand employment authorization for H-4 spouses, as other countries permit employment authorization for the spouses of foreign professional employees. It is unknown why USCIS has taken this highly restrictive approach while touting its liberality in a lengthy proposal. Please note that this proposal is merely a proposal. It is not yet effective. When, and if, it will become effective is unknown. This proposal may be found [here](#).

- USCIS Issues “Notice of Proposed Rule” Harmonizing H-1B1 and E-3 Categories with H-1B Regulations

On the same day, May 12, 2014, USCIS also proposed a rule on “Enhancing Opportunities for High-Skilled Specialty Occupation Professionals.” This highly touted and lengthy proposal would in certain limited way, conform the H-1B1 category for Chileans and Singaporeans, to the H-1B regulations. The proposal recognizes that the H1B1 and E-3 categories are authorized for employment incident to status without the need to file a separate I-765 employment authorization application, as are principal E-3 Australian nationals. This proposed amendment has, practically, been in effect for many years.

The proposal does update filing procedures for extensions of stay and change of status requests for principal E-3 and H-1B1 non-immigrants as it includes these applicants in the 240 day automatic work extension in Service regulations found at 8CFR274a.12(b)(20).

The proposal also makes a technical adjustment in the evidentiary criteria for classification in the immigrant outstanding professor and researcher (EB-12) category by allowing submission of evidence comparable to other forms of evidence already listed in the regulations. This amendment, of limited practical applicability, merely conforms the outstanding researcher and professor category to the criteria set forth for the EB-11 category including extraordinary workers. Again, it must be emphasized that this regulation is merely a proposal. The actual proposal maybe found [here](#).

## 2) Liason Meeting Revelations

April and May have been big months for liason meetings with the various government agencies. The minutes of these meetings sometimes include nuggets of information useful to the international education community, although they are not regulatory and must be evaluated carefully.

- **USCBP on Automatic Visa Revalidation**

On April 10, 2014 AILA met with US Customs and Border Protection. In discussing automatic visa revalidation by travel to contiguous countries and return to the United States:

CBP has indicated that automatic visa revalidation under 22 CFR §41.112(d) continues to be available for individuals who enter the U.S. and receive a record of admission generated automatically and stored electronically. AILA continues to receive

persistent reports, however, that some ports are refusing admission under this provision when an alien departs by air to a contiguous country for 30 days or less and seeks to return by land within the period that the Form I-94 was valid. Members report being told by local CBP offices that the Form I-94 was cancelled upon departure by air and, therefore, automatic visa revalidation is not available. Admission under the automatic visa revalidation provision should be available to all individuals who meet the criteria in 22 CFR §41.112(d), and should not be dependent on whether the person has a paper I-94 or an electronic I-94.

**A.** Please confirm that automatic visa revalidation is available provided that the alien departs for no more than 30 days to a contiguous country and returns within the period during which the electronic Form I-94 was valid and otherwise complies with the requirements of 22 CFR §41.112(d).

**CBP Response:** Yes, provided that all of the conditions for automatic visa validation are met.

**B.** Please confirm that if an alien departs the United States by air, it is not necessary to use the same mode of travel (air) upon return in order to be admitted under the automatic visa revalidation provision.

**CBP Response:** Yes, provided that all of the conditions for automatic visa validation are met.

- Nebraska Service Center Student/School/Other Product Line on Reporting Students Unlawfully Working; Performing Self-Employment

Minutes from a meeting from the Student/School/Other Product Line Stakeholder call with the National Service Center on May 8, 2014 discussed issues of employment authorization for F-1 students. The first question addressed what should be done by the DSO upon learning of unauthorized employment by the F-1 student. The second question involved the timing of an application for OPT by an F-1 student who is going to be employed by a business entity which she or he may create:

1. If an F-1 student with D/S status does unauthorized work what is the process of canceling his/her status? Can ISO cancel it without forwarding the case to an immigration judge? Does CBP have same authority to cancel an F1 visa for work violations?

Answer: Unauthorized employment automatically violates an F-1 status. When an ISO makes this determination (that a person has violated their status), the person is referred to ICE for removal proceedings and ICE makes that determination. You would need to contact CBP for the procedure for removal proceedings. Neither USCIS nor CBP cancels visas issued by DOS. ICE contact info: SEVP@ice.dhs.gov, or call 703-630-3400. Also, for the CBP web site, visit [www.cbp.gov](http://www.cbp.gov) and go to travel, then international visitors, or call 877-227-1511. To contact the Dept. of State, visit [www.state.gov](http://www.state.gov).

2. For F-1 students with approved OPT who intend to engage in self-employment, does the time that the student is setting up the business (forming a legal entity, getting a business license, taking professional exams, etc.) count as employment, or would NSC view these preparatory activities as unemployment and therefore count against the 90-day maximum unemployment period for maintaining F-1 status?

Answer: The SEVIS Policy Manual says that a student on OPT may be self-employed and must be able to prove that he or she has the proper business licenses and is actively engaged in a business related to the student's degree program. In response to a follow up question about the 90-day period, NSC responded that all the cases it has seen involved situations where the student already had the business set-up.

- Texas Service Center Discusses "Directly Related" to Field of Study on I-20; OPT Eligibility

The notes from an April 15, 2014 Texas Service Center Open House discusses an issue involving I-20 entries, and one about OPT:

**Q.** Why must we provide a statement indicating that the student intends to engage in OPT in a position that is directly related to his/her field of study in the remarks area (page 1, #9) and the comments (page 3) area of the I-20.

**A.** They had a national conference call with headquarters and all the service centers two weeks ago and it was decided that they will no longer issue RFEs if the statement is not included – though they would find it helpful if the statement was included. However, if you have already received an RFE on this issue you do need to respond to the RFE.

...

**Q.** A student who completes a year of OPT upon completion of a Master's program moves to a different field of study to pursue a Bachelor's degree. Since OPT was not used before when the student completed the Bachelor's degree that led to the Master's degree, can the student now request OPT upon completion of the Bachelor's degree in the new field of study?

**A.** It is permissible for a student to split OPT between two degrees at the same education level, and it is noted in this question that the student did not request OPT after completion of the initial Bachelor's degree. If this student is in a valid F-1 status, with an educational objective, and is seeking OPT subsequent to a Bachelor's degree in a different field of study, the student may be eligible to request employment authorization.

3) State Department Requests Comments on DS-2019 Revision

On May 9, 2014 the Federal Register published a "Notice of Request for Public Comment" on a "Sixty-day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor Status (J-1 Visa). State is evaluating form DS-2019 with the intention of changing its name to "Certificate of Eligibility for Exchange Visitor Status (J-1 Visa)," although each form will note whether it is for a J-1 or a J-2 recipient. Additional

changes include in the electronic data gathering portion: email address as a required field at the time of validation for exchange visitors, optional fields for U.S. telephone number and mailing address; and the current U.S. address will be changed to physical address. There will also be revisions in the instructions section and an update to remove Flight Trainees as an exchange category. The notice may be found [here](#).

4) Vermont Service Center “Stakeholders Newsletter,” Spring 2014

The Vermont Service Center has released its “Vermont Service Center Stakeholders Newsletter” for Spring 2014. The Newsletter contains filing tips, news on the H-1B process, the grand opening of a new VCS facility in Essex, Vermont, and a VSC employee suggestion program. Among the filing tips is the suggestion that signing in color ink will distinguish original signatures from copies. Query- What about color copiers?

The newsletter also mentions the “VSC Suggestion Program.” The program seeks input from employees using an online collaborative platform that could be reviewed by all employees, and which will provide updates on suggestions. Perhaps, VSC would be interested in receiving suggestions from its “customers.”

5) SEVP Report on Quarterly Statistics

SEVP has released its “April 2014 Student and Exchange Visitor Information System, SEVIS By The Numbers; General Summary Quarterly Review.” For those who are statistically inclined, the review notes that there are currently 1,015,178 F/M students studying in the United States and 188,382 J-1 exchange visitors, with 29% of F/M students from China and 56% being male. There are 89,030 SEVP certified schools with 77% having between 0-50 F/M students and 72% of all F/M students being enrolled in Bachelors, Masters and Doctoral programs, with business related degrees being the most popular. 351,397 F/M students are in the STEM field. 85% of the STEM students are from Asia and 43% of all STEM students study engineering. The Quarterly Review may be found [here](#).

6) USCIS Extends Registration Period for Haiti TPS

The Federal Register of May 2, 2014 carried a “Notice” by USCIS extending the re-registration period for Haiti TPS. The TPS period for

Haitians was originally extended on March 3, 2014 for eighteen months. The re-registration period was to expire on May 2, 2014. Because a “low proportion” of the expected number of re-registrants had done so as of April 20<sup>th</sup> the re-registration period was extended as the “...low number of re-registration applications may be due to confusion about the re-registration deadline as many beneficiaries did not realize that they were required to re-register by May 2, 2014 since the EADs have a printed expiration date of July 22, 2014.”