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MEMORANDUM

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To: International Education Program Administrators

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1) Senate “Gang of Eight” Introduces Comprehensive Immigration Bill

On April 16, 2013 the “Gang of Eight” consisting of Senators Schumer (D-NY), McCain (R-AZ), Durbin (D-IL), Graham (R-SC), Menendez (D-NJ), Rubio (R-FL), Bennett (R-CO), and Flake (R-AZ) introduced the “Border Security Economic Opportunity Modernization Act (S.744).” The first question is whether the acronym will be BSEOMA, or simply the BS Act of 2013.

The introduction of the Senate bill in the present political climate, and with strong support, may present a real chance of passage of positive immigration reform, both in the Senate and in the House of Representatives. But the road for a bill to become a law is long, contentious, and arduous. Only time will tell whether the Gang of Eight will be feted as heroes, or sent out into the country for reeducation.

For those of you who would like to review an interesting and uplifting YouTube presentation on how a bill becomes a law, please click [here](#).

The bill contains 844 pages and is more comprehensive than the bills of 1986 and 1990 combined. Although news outlets focus on “amnesty,” the bill also contains a major overhaul of the immigrant family and employment preference systems, as well as new provisions for agricultural workers, construction workers, major changes in non-immigrant categories including the H-1B and L-1A categories, and minor changes in the F-1 and J-1 categories, among others. The bill would make E-verify mandatory, and heighten border security.

Of major interest to the university community are changes in the employment based immigrant quota system starting at Section 2301. Although the present limit of 140,000 places will remain the same, actual beneficiaries will increase significantly as the bill will recapture unused numbers from the years 1992 -2013, eliminate the 7% per country quota which has severely backlogged immigration for employment based India and China applicants, and eliminate spouses and children of employment based immigrants from being counted against the quota.

Also eliminated from the count are “extraordinary ability” and “outstanding professor and researcher” applicants, as well as those holding a doctorate in any field. In addition, holders of advanced STEM degrees from a U.S. university with an offer of employment in a related field who have earned their degrees within five years of their petition, will also be excepted from the count.

A point system would control employment immigration for employment based applicants with lesser credentials.

In the “amnesty” context, the inadmissibility ground for student visa abusers will not be enforced. However, some students may wish to take advantage of becoming illegal in order to apply for amnesty. They should clearly be advised against doing so.

Section 2303 eliminates the Diversity Lottery program, thereby disappointing many highly optimistic students who are certain that they will be among the less than one percent who win the lottery.

Starting at Section 2305, the bill modifies the family based system so that certain family categories will no longer be counted against the quota. Therefore, aged out over twenty one year old family preference 2B applicants will no longer be subject to a 7+/- year backlog, as more quota numbers will be available in the F2B category through a drop down, and the V nonimmigrant category will become open to F2B beneficiaries until their quota number becomes available, thereby eliminating their need to continue in school in order to maintain status.

Buried on page 117 of the bill, at the end of Section 2103 is a repeal of Section 505 of IIRAIRA of 1996 which denied resident tuition/benefits at postsecondary institution for undocumented students.

Hidden among the provisions of section 2405 regarding physician immigration is a subsection that appears to apply to all J-1 applicants. This provision will eliminate the two year foreign residence requirement of section 212(e) of the Act for the spouse and children of J-1 exchange visitors. This provision is long needed, and will alleviate great hardship, especially when the J-1 exchange visitor and J-2 spouse have been divorced.

Section 3102 requires the Social Security Administration to develop fraud, tamper, and wear proof identity theft resistant social security cards within six months of the enactment of the bill.

Section 3303 requires DHS to create a mandatory exit data system for air and sea departures by the end of 2015, which must include an integration of data held by ICE, CBP, USCIS, EOIR, and the Department of State Bureau of Consular Affairs, through an interoperable electronic data system. The system must also include access to information held by federal law enforcement agencies, and intelligence organizations.

Section 4101 of the bill contains many changes to the H-1B “specialty worker” category including an annual floor of 110,000 and a ceiling of 180,000 H-1B places based upon a survey of market conditions which could result in a maximum increase or decrease of 10,000 in any specific year. With regard to the additional 20,000 places for H-1B beneficiaries with a U.S. advanced degree, the amount will be increased to 25,000, but will only be available to those with STEM degrees from U.S. programs. For extension petitions, USCIS will be required to provide deference to prior H-1B adjudications, absent material error and substantial changes, thereby permitting a reasonable sense of security when filing an H-1B extension. A 60 day grace period will be provided after termination of employment. The State Department would be required to reinstitute revalidation of certain visas in the United States including E, H, I, O, P, and R. Revalidation was eliminated by the State Department after 9/11. DOS, in

consultation with DHS, will be permitted to waive interviews for low risk nonimmigrant visa applicants. Other technical requirements will be added to the H-1B process including modification of the prevailing wage determination system and specific requirements for colleges and universities, as well as posting for 30 days on a Labor Department website.

Of major interest to the college and university community is section 4401 which authorizes “dual intent” for students pursuing a full course of study at “an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elementary school, or other academic institution”... so long as that institution is providing the appropriate reports. “Except that the student who is not seeking to pursue a degree whether a bachelor’s degree or a graduate degree, will not be considered for dual intent. It would appear from this tortured language that only those students in a degree program will not have to demonstrate an intention to return to their home country. The ESL student at a university who has been accepted for an academic program should benefit, although the exam prep student will not, nor, perhaps, will the ESL applicant in a program not affiliated with a college or university, perhaps?

2) USCIS Implements Customer Identity Verification at Field Offices

On May 6, 2013 USCIS will implement its new acronym, CIV (Customer Identity Verification). Visitors to a local field office will now be required to submit biometric data, specifically 2 fingerprints and a photograph, in order to be permitted into USCIS offices for interviews, or to receive evidence of an immigration benefit. USCIS justifies this practice as both defending against threats to national security, and protecting customers from identity fraud. The biometric data captured will be compared against biometric data already on file for such documents as parole authorization (I-131), temporary extensions of green card replacement applications (I-90), and temporary green card stamps on passports.

Those appearing for an Infopass appointment or as a guest of an applicant/petitioner will not be required to submit biometric data. In any event, please tell your students that when they go to USCIS they should leave at home their guns, knives, alcohol, steel toed boots, and that they should wear pants with elastic waistbands and grandma's favorite sweater before they say 'cheese.'

3) US Consulates Have Access to SEVIS

AILA has reported through Meeting Minutes with U.S. consulate staffs in London, Warsaw, and Paris that U.S. consular offices have access to SEVIS through various intragovernmental systems.

4) Follow-up to CBP Automation of I-94

On April 26, 2013 USCBP announced that the automation of Form I-94 has gone live for certain air and sea entries. I-94s will no longer need to be completed prior to entry. The change will first go into effect starting April 30th in Charlotte, Orlando, Las Vegas, Chicago, Houston, and Miami, continuing across the country through May 21st. New York goes live during the week of May 7. CBP omitted to mention Newark.

CBP has also posted an explanatory video on their website <http://www.cbp.gov>.

As CBP eliminates issuance of the I-94 card at airports, other government agencies are modifying their requirements.

♦ USCIS Will Require Applicants to Print Electronic I-94 for Applications

On March 27th at a meeting between AILA and USCIS Headquarters, it was noted that USCIS does not have access to the CBP system and that, therefore, when an I-94 is required for a USCIS petition or application, the applicant must print out their I-94 from the CBP website: www.cbp.gov/I94.

♦ Social Security Adds “Admission Stamp on Unexpired Foreign Passport” to Identity Document List

Social Security has also advised that its list of “Acceptable Alien Identity Documents” for a social security number has been modified to accept an admission stamp in an unexpired foreign passport as an acceptable document, in addition to the already existing I-94 Arrival/Departure record in combination with an unexpired foreign passport. Social Security interprets the unexpired foreign passport and the entry stamp as two separate documents.

Local state DMVs have not yet been heard from, to no one’s surprise.

5) H-1B Cap Reached During First Week

As many of you are aware, the H-1B category is often used by students to work in the United States often after expiration of their OPT. Current H-1B receipts have a limit of 65,000 places and an additional 20,000 places are available for applicants with advanced U.S. degrees. The government fiscal year begins on October 1st, and in the event the previous year’s cap numbers are exhausted (which has always occurred since the implementation of a cap) USCIS will accept application six months prior. Thus, the H-1B application season begins on April 1st.

Three years ago the cap was reached in January, two years ago in November, and last year in June. This year, the U.S. economy was in full swing and the H-1B cap was reached during the first week when approximately 124,000 petitions were received. Thereafter, a computer generated random selection process – a lottery – was used to select the 85,000. Our experience has been that we have received USCIS receipts for a substantial percentage of applications filed by our office, but we have not yet received rejections and do not know if any further receipts will be issued. It should be noted that certain H-1B petitions are exempt from the cap including extensions, changes in the terms of employment or

employer, or concurrent H-1B filings. Also exempt are petitions filed by institutions of higher education, and by non-profit research organizations.

6) DACA Receipts as of April 17th, 2013

Between August, 2012 through March, 2013 USCIS received 488,782 DACA applications of which it accepted 472,004. It approved 268,361 and denied 1,377.

Mexico continues to be the top country of origin with 354,002 applications. By comparison El Salvador is the next with 18,949 applications.

California had 134,167 applicants, Texas 76,438, and New York 26,365. New Jersey had 14,390, still within the top ten.

7) TPS Extended for Honduras and Nicaragua

The “Federal Register” of April 3, 2013 carried USCIS Notices that Temporary Protected Status has been extended for both Honduras and Nicaragua for an additional 18 month period from July 6, 2013 through January 5, 2015.

Reregistering applications must be filed between April 3, 2013 through June 3, 2013, and new EADs with a January 5, 2015 expiration date will be issued.

8) Scam Warnings

♦ Scams Relating to the Proposed Immigration Bill

Recently, USCIS, AILA and other organizations have issued warnings about immigration scams. Some of these warnings relate to developments in the progress of the Comprehensive Immigration Reform Act. I’ve recently received several phone calls from individuals asking about changes in the law which they have heard about through “friends.” If any inquiries are received it is strongly suggested that individuals be warned against giving money to any individual purporting to assist them in obtaining any immigration benefit under any new law.

The United States, as with any democracy, has a very complicated method for passage of new legislation. This process is not well understood, and this misunderstanding has been abused by scammers.

♦ A Recent Scam Reported by AILA

A particularly insidious scam was recently reported by AILA:

According to one report, the individual will receive a call purporting to be from a USCIS officer, who will have certain correct information on the individual, including the individual's name and address. The caller will state that there is some discrepancy in USCIS records, and ask for confirmation of data, such as an I-94 number, an "A" number, or a visa control number. The caller will then tell the individual that there is a penalty for not clearing up the discrepancy, and that the individual is to send a sum of money via Western Union, to an address the caller provides. [Individuals receiving such calls should]... report them to appropriate law enforcement authorities, which may include the FBI, and to the [Federal Trade Commission's Bureau of Consumer Protection](#), whose Consumer Sentinel database is accessed by criminal and civil law enforcement authorities worldwide.

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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