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MEMORANDUM

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To: International Education Program Administrators

- 1) H-1B Lottery Developments
- 2) Department of Homeland Security Publishes Final Rule Regarding
“Adjustments to Limitations on Designated School Official Assignment and
Study by F-2 and M-2 Nonimmigrants”
- 3) E-Verify Available Nationwide
- 4) Liaison Meeting Announcements
 - a) AILA NY Chapter and CBP Meeting Minutes
 - 1) Entry in One Status
 - 2) Entry and Departure Records Available for 5 Years
 - 3) Foreign & US Family Members Can Use Same Entry Lines
 - b) When will STEM OPT Regulations be Announced?
 - c) J-1 Developments

- 1) H-1B Lottery Developments

USCIS announced on April 7, that it had received sufficient H-1B petitions to reach the cap of 65,000 plus 20,000 for the advanced degree cap. The Service announced that it had received nearly 233,000 H-1B petitions. This is an increase from 174,000 H-1B petitions in the last fiscal year. The random computer generated selection process was held on April 12.

While no announcements have been made by USCIS regarding actual case processing and the issuance of receipts or rejections, there are anecdotal reports that premium processing H-1B petitions that were selected in the lottery are now being processed, as are 20,000 Masters cap petitions. In fact, SEVIS issued a Broadcast Message Number 1504-06 on April 21, 2015 which advised that the SEVP Response Center was receiving an unexpectedly high call volume and undergoing longer than normal wait times relating to inquiries about H-1B petitions. SEVP requested that students seeking to know about their H-1B status, and who have a receipt number should contact USCIS at 1-800-375-5283. Apparently, word had gotten out that H-1B acceptances were being noted on SEVIS records, as some of you might have learned from your students.

2) Department of Homeland Security Publishes Final Rule Regarding “Adjustments to Limitations on Designated School Official Assignment and Study by F-2 and M-2 Nonimmigrants”

The “Federal Register” of April 29, 2015 carried a “Final rule” by DHS which amends SEVP regulations. The “Proposed rule” had been published on November 21, 2013.

The “Final rule” eliminates the limit of ten DSOs per campus and permits school officials to nominate an appropriate number of DSOs for approval by SEVP to manage the school’s needs. Both the individuals and the number of individuals need SEVP approval. However, SEVP’s criteria to be used to determine the appropriate number were not set forth.

The “Final rule” also permits F-2 and M-2 spouses and children to study at SEVP certified schools for less than a full course of study. The “avocational or recreational” restriction is partly gone. However, the F-2 or M-2 individual will not be permitted to take a “full course of study” without changing status to F-1 or M-1. Part time study must be at SEVP certified schools unless the study is “avocational or recreational” meaning, assumedly, that it does not lead to a degree, and as long as it is in a bona fide program “and that studies at the school are unlikely to raise national security concerns.” Avocational and recreational programs may be full time. F-2 or M-2 part time study will not permit employment. USCIS purposely rejected part time academic study for J-2 dependents.

It also is noted, in its cost/benefit analyses that DHS has officially agreed that DSOs are “professionals” although only 7 hours of training is still required. The official wage category has been elevated from “Office and Administrative Support workers, all others” to Educational, Guidance, School and Vocational Counselors”. DHS also noted that the average wage rate for a DSO is \$27.99/hour, and including benefits \$37.80 an hour.

DHS estimated that 88 school may add DSOs as a result of this rule.

This new regulation and its supporting explanatory material is lengthy, but should be read. It may be found [here](#) in the “Federal Register”.

3) E-Verify Available Nationwide

On April 12, 2015 USCIS announced the expansion of myE-Verify services nationwide. USCIS describes my E-Verify as “a one-stop shop for employees to create and maintain secure personal accounts and access features for identity protection”. Features available in E-verify include self-check and the employee rights toolkit, and free and secure personal accounts to manage the use of information and self-check which can be instituted by employees and job seekers. Individuals may be able to self-lock their social security number to prevent unauthorized or fraudulent use in E-verify. The myResources function may be used to educate employees on the rights and the responsibilities of employers in the employment eligibility verification process. The announcement noted that E-verify is used by nearly 590,000 employers in the United States.

4) Liaison Meeting Announcements

a) The minutes of a meeting between the AILA NY chapter and CBP held on November 12, 2014 noted, among other items, that:

1) Entry in One Status

a) an individual may only enter the United States in one status. In our student context this issue has arisen when a student should be an F-1 entrant and is recorded as a B-2 tourist, usually, when the student has a problem with the I-20 and may have a separate tourist visa. In this case, generally, a new entry may be required.

2) Entry and Departure Records Available for 5 Years

It was also noted that the electronic I-94 system now makes entry and exit records available for a period of 5 years.

3) Foreign & US Family Members Can Use Same Entry Lines

It was noted that family members of United States citizens travelling together are permitted to proceed through the same line, even if one family member is not a US citizen. However, both citizen and non-citizen would, most likely, be required to use the non-US line because of the need for the noncitizen's nonimmigrant processing.

b) When will STEM OPT Regulations be Announced?

The minutes of a meeting between AILA and USCIS Benefits Policy Committee held on April 16, 2015 discussed the progress of actions mentioned during the President's speech of November 20, 2014 in regard to ICE's development of a proposed OPT Stem regulation. It was noted that "USCIS is coordinating the development of this regulation with ICE. As this initiative is currently under development and subject to agency, department, and executive branch review and clearance, we cannot provide a timeline for issuance at this time."

c) J-1 Developments

At a meeting between AILA and the Department of State held on April 15, 2015 certain J-1 concerns were discussed including staffing issues for the Waiver Review Division, correcting a Waiver Recommendation Letter, and the Final rule regarding Subpart A of the J-1 program administration regulations.

The discussion follows in a Q and A format:

J-1 Visas

22. What is the current staffing level of the Waiver Review Division (WRD) and specifically, how many officers are responsible for issuing advisory opinions? Are advisory opinions limited to more experienced officers or are these matters included in the caseload of all WRD officers?

A: The WRD is staffed by a Division Chief, Deputy Chief, nine adjudicators, four waiver assistants, and one Data Entry clerk. The Deputy Chief assists with the day-to-day management of the division and the staff reports to the Division Chief who reports to the Director of Legal Affairs. There is one experienced adjudicator responsible for advisory opinions, backed-up by another during absences from the office. Advisory opinions are not part of the caseloads of other WRD adjudicators.

23. What is the procedure for requesting a correction of a waiver recommendation letter that contains a substantive error (e.g., lists a site other than the one at which the J-1 will render service)?

A: Send an email to 212ewaiver@state.gov, and ask for a correction.

24. In late fall, the Bureau of Educational and Cultural Affairs (ECA) published a final rule making significant changes to Subpart A of the J-1 regulations regarding program administration. Although a final rule, ECA nevertheless invited public comment. What is the current status of ECA's evaluation of the comments submitted?

A: ECA received approximately 100 responses and is continuing its process to give each comment thorough consideration.

Are there any particular areas which ECA plans to modify in response to those comments?

A: ECA has not yet made a determination whether to modify Subpart A. Will an updated final rule be issued, and if so, what is the anticipated date that this updated rule will be published?

A: ECA hopes that an updated final rule, including a supplementary section to explain changes, if any, will be published in the late spring or early summer. What plans does ECA have for continued stakeholder engagement on the new regulations?

A: ECA has held a number of stakeholder engagement meetings with sponsors. It is likely that additional public engagement will occur in the coming months, including at the time Subpart A is republished.

Many thanks for your comments, your suggestions and your confidence in us, and for referring your students, scholars and faculty members.

Please let us 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.