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MEMORANDUM

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To: International Education Program Administrators

Autumn is here—and many of your students are looking forward to life after F-1. As many of you know, our firm provides presentations at schools for international students without charge.

Please let us know, as soon as possible, if you would like us to come to your campus.

- 1) H-1B Adjudication Delays
- 2) SEVP Minutes
- 3) State Department Publishes New Schedule of Fees
- 4) LGBT “Family Relationship” Defined for Prosecutorial Discretion
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- 7) USCIS Publishes Photo and Fingerprint Guidelines for Accommodating Religious Beliefs
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- 9) DACA Developments
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- 11) US Embassy/India Announces New Visa Processing System
- 12) STEM Law Fails in Congress

1) H-1B Adjudication Delays

On September 26, it was announced by AILA that USCIS had advised that between the California Service Center and the Vermont Service Center there may be as many as 17,000 cap subject H-1B petitions that are still pending. These petitions were filed between April and mid-June. Some are completely “untouched” by examiners. In the F-1 context, this means that prior H-1B cap directives which have noted that OPT employment is extended to September 30 for H-1B applications filed while the beneficiary was work authorized, is not extended beyond September 30. However, the prospective beneficiary may remain in the U.S. until the adjudication is complete. Apparently, the only response by USCIS for their delay is that the parties may file for Premium Processing adjudication for an extra fee of \$1,225.00.

2) SEVP Minutes

On September 6, 2012 there was an SEVP-Stakeholder Meeting/Call with NAFSA and SEVP participants. AILA posted the 7 page minutes on September 28, with a paragraph of disclaimers.

The meeting discussed many issues including recertification, I-17 updates, lack of standards, delay, and many problems caused by a lack of agency understanding of the field being regulated.

Look for the meeting minutes in the upcoming NAFSA.News.

3) State Department Publishes New Schedule of Fees

The “Federal Register” of September 17, 2012 carried a “Final rule” announcing a Schedule of Fees for Consular Services by the Department of State and Overseas Embassies and Consulates. The effective date of the “Final rule” is September 17, 2012. In short, non-petition based immigrant visas (excluding the E category) are now \$160.00.

The H, L, O, P, Q, and R visa categories are now \$190.00.

The E category is \$270.00.

For immigrant petitions which are family based, the fee is \$230.00.

Employment based immigrant visas are now \$405.00.

The lucky Diversity Visa Lottery winner will pay \$330.00.

4) LGBT “Family Relationship” Defined for Prosecutorial Discretion

Homeland Security Secretary Napolitano has clarified that “Prosecutorial Discretion” for “family relationships” applies to LGBT couples.

In a letter to Representative Nancy Pelosi (D-CA) Homeland Security Secretary Janet Napolitano stated:

"As you are aware, U.S. Immigration and Customs Enforcement (ICE) Director John Morton's June 2011 memorandum, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens," requires ICE personnel, when considering whether an exercise of prosecutorial discretion is appropriate, to consider the totality of the circumstances presented in individual cases, including whether an individual has close family ties to the United States, when making enforcement decisions.

In an effort to make clear the definition of the phrase "family relationships," I have directed ICE to disseminate written guidance to the field that the interpretation of the phrase "family relationships" includes long-term, same-sex partners. As with every other factor identified in Director Morton's June 11 memorandum, the applicability of the "family relationships" factor is weighed on an individualized basis in the consideration of whether prosecutorial discretion is appropriate in a given case."

Hopefully, this clarification will actually be understood and followed by ICE personnel.

The *New York Times* reported on the letter on Saturday, September 29, 2012 at page 15 which may be found [here](#).

5) Issues with SEVIS and ELIS Interface

It has recently come to our attention that there is an interface snafu between ELIS and SEVIS which has caused the SEVIS records of students who have been approved for reinstatement to be terminated. Apparently, when the adjudicator approves the reinstatement in SEVIS, that information hits ELIS and ELIS interprets the reinstatement approval as a change of status, ELIS then terminates the SEVIS record as if the student had changed to another status.

We have also heard that adjudicator(s) are trying to be proactive and appear to be making an effort to contact the DSOs of every affected student, rather than subjecting the DSOs to the Help Desk.

It may be worth checking the SEVIS record of any individual who has filed for reinstatement or a change of status through ELIS while they're pending, and perhaps even after approval. May this be a reminder that it is going to take some time before all the bugs of the "improved" system are fixed.

Hat tip to Erika Rohrbach.

6) IRS Issues 2012 FAQs Re: ITINs

IRS has issued a modification of its procedures for obtaining Individual Taxpayer Identification Numbers (ITINs). Formerly, IRS requested notarized copies of eligibility documents such as passports and birth certificates. However, the rule is being changed to require copies of documents which are certified by the original issuing agency as an exact copy of the original document, and which contain an official stamp and seal from that agency. These certified documents may be obtained through a foreign consular office in the United States. An apostille will not satisfy a certification requirement as it is verification of a notary. Alternatively, original documents may be submitted, which IRS swears they will return shortly.

7) USCIS Publishes Photo and Fingerprint Guidelines for Accommodating Religious Beliefs.

USCIS published a “Policy Memorandum” dated July 24, 2012 which sets forth its guidelines for capturing fingerprints and photographs for individuals with religious requirements which require accommodation for headwear for religious beliefs. In short, USCIS will not waive the photograph requirement in any situation based on religious objections. However, the Policy Memorandum states:

Religious headwear can be worn if a reasonable likeness can be obtained from an individual, the full face is visible and the religious headwear does not cast a shadow on the face. Therefore, USCIS will ask an individual to remove or adjust portions of religious headwear that covers all or part of the individual's face. Even if the religious headwear does not cover the face, the religious headwear may cast a shadow on the face, making the capture of the entire face impossible. In those instances, USCIS will ask an individual to adjust or remove religious headwear, if necessary, to avoid a shadow being cast on the face. An individual's ears should be exposed, but religious headwear is allowed to cover the ears if USCIS can still identify the individual.

When USCIS requests that an individual adjusts or removes part or all of his or her religious headwear, the ASC or Field Office will offer a private room or screened area to capture the photograph, when a private room or screened area is readily available. Additionally, if there is a USCIS employee or contractor of the same gender available to capture the photograph, the ASC or Field Office will offer the individual a same-gender photographer. If the ASC or Field Office is not able to offer a private room/area or a same-gender photographer, USCIS will offer to reschedule the appointment, whether it is for photograph capture at an ASC or photograph capture in connection with an interview at a Field Office, for a different day or at a different office where it is feasible to accommodate the individual's request.

In regard to fingerprinting, USCIS will, upon request, accommodate individuals who request a same-gender fingerprint technician or officer. The appointment may be rescheduled if a same-gender technician is not available at that time.

8) USCIS Announces New Saturday Hours for Call Center

USCIS publishes a monthly newsletter entitled “Straight from the Source.” The September issue had several items of interest including a note that the National Call Center has expanded its hours to include Saturdays from 9am to 5pm. Live agents will now be available Monday through Friday, 8am - 8pm and Saturdays, 9am - 5pm. The toll free number is 1-800-375-5283.

9) DACA Developments

USCIS has been issuing FAQs on a regular basis with clarifications regarding various aspects of DACA. The latest FAQ was issued on September 14. It discusses travel outside of the United States, and the preparation of the I-765, among other things. These FAQs appear to be the only authoritative guidance by USCIS and must be reviewed in depth by all individuals counseling applicants or potential applicants. The latest FAQs may be found [here](#).

In the meantime, 10 ICE agents filed a lawsuit against DHS regarding the DACA Directive. Many of the agents feel that the program forces them to violate their oath of office to enforce the immigration laws, as well as violating the law itself. The attorney for the plaintiff's is the Kansas Secretary of State, Kris Kobach, who incidentally is an advisor to Mitt Romney's presidential campaign. It is no wonder that the administration of DACA is under USCIS, and not under the same folks at ICE who dragged their feet in the guidance and implementation of the Prosecutorial Discretion program.

10) TPS and Student Benefits Extended for Haiti

On October 1, USCIS announced that Temporary Protected Status for Haiti has been extended through July 22, 2012. The announcement was made in the “Federal Register”, on October 1. The re-registration period extends through November 30, 2012. However, the individuals who have not continuously resided in the United States since January 12, 2011 will not be eligible.

Further:

In addition, the Department of Homeland Security (DHS) is [extending](#) the suspension of certain requirements for F-1 nonimmigrant Haitian students. The extension will enable these F-1 students to continue to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while maintaining their F-1 student status. The suspension of the regulatory requirements will remain in effect for an additional 18 months, through July 22, 2014. Further details about this extension may be found in the Federal Register notice published [today](#).”

11) US Embassy/India Announces New Visa Processing System

On September 6, the US Embassy in India announced that it is implementing a new visa processing system throughout India in order to standardize procedures and simplify fee payment and appointment scheduling through a new website at www.ustraveldocs.com/in. Application fees will be payable by electronic funds transfers or by mobile phone. Cash may be paid at 1,800 Axis bank branches. Appointment scheduling can be done online and will accommodate group and emergency appointments. Questions can be answered by telephone, email or online chat. The announcement may be found [here](#).

12) STEM Law Fails in Congress

Although the President and the Democratic and Republican parties have endorsed the eligibility of STEM green cards as a no brainer, Lamar Smith, (R -TX) the Chair of the House Immigration Subcommittee has prevented passage in this Congress. Mr. Smith had introduced a bill providing for STEM green cards in an amount equal to the 50,000 limit of the Diversity Visa Program, provided that the DV lottery program be eliminated.

Another bill was simultaneously introduced that did not include the DV lottery elimination. Because of timing, the only bill receiving a vote in the House was that of Mr. Smith. Apparently, Mr. Smith's personal agenda of eliminating the DV Lottery took priority to that of providing the expertise to expand US jobs and to prevent the loss of American educated talent.

The process may be read about in NAFSA.News of September 25, 2012.

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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