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MEMORANDUM

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To: International Education Program Administrators

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1) SEVP Posts Third Version of Pathway Programs Draft Guidance

On September 26, 2014, SEVP Draft Policy Guidance for Adjudicators 1210-03: Pathway Programs was issued.

The Purpose/Background section of the Draft Policy Guidance states that: “The Student and Exchange Visitor Program (SEVP) have encountered increasing interest on the topic of pathway programs. These programs and practices raise questions regarding the adjudication of pathway programs and appropriate issuance of the Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. The guidance contained in this document clarifies the proper adjudication of these programs for SEVP adjudicators. SEVP may only certify these programs for F-1 students.”

The “guidance” is agency material used internally for the guidance of officers adjudicating benefits. “Guidance” should interpret regulations which have gone through the statutory rule making process of the Administrative Procedure Act (APA). SEVP has been using a structure similar to that of the APA for internal guidance. SEVP issues draft guidance, interim guidance, and final guidance with the expectation that interim and final guidance will provide requirements to be followed by its “customers.” In our experience, draft guidance is also being used by the agency in its adjudications. It is strongly suggested that all schools involved in either bridging programs or ESL programs preparatory for academic programs review this draft guidance carefully. Whether or not agency guidance may be substituted for actual regulations is a contentious legal area which may need to be explored by institutions that SEVP finds to be not in compliance with their guidance.

2) Notes from USCIS Ombudsman Teleconference Series: USCIS and Student Visa Issues

On Thursday September 25, 2014 the USCIS Ombudsman's office held a teleconference discussing immigration issues impacting international students. In addition to the Ombudsman, representatives from both USCIS and SEVP were present. For the most part it was an uneventful call. However, a few nuggets were gleaned. It was mentioned that a new I-20 form will soon be released. The current one has been around since 2003. It was reported that most of the changes will be cosmetic, but the new version will allow for more flexibility. Whose flexibility remained unstated.

SEVP also provided an update with regard to Field Representatives. SEVP reported that the first class has already been deployed (yes, they used a military term), and had visited many school campuses. Apparently, the early reviews from education institutions were extremely positive as the first class received marks for excellence for promptness, professionalism, and courtesy. SEVP representatives, while touting the success of the first class, revealed that the Field Representatives are indeed gatekeepers of I-17 compliance. This will come as no surprise to many, but it was the first time our office had heard such an acknowledgment. It is unclear if this revelation was done intentionally. It looks like those nice folks may decide who will get the key chain for being nice, and who will get the lump of coal for being naughty.

3) VSC Processing of EAD Applications

A recent topic of discussion on the Region X Listserv has been the questionable issuance of RFEs for long standing I-765s. According to USCIS regulations at 8CFR274a.13 (d) EADs are required to be issued within 90 days of submission. However, instead of approvals, an inordinate number of Requests for Evidence (RFEs) have been issued. This is a procedure which has been followed for some years by USCIS in the premium processing context when the Service has been unable to adjudicate premium processing applications within 15 days. It is a way of avoiding regulatory compliance which is unacknowledged by USCIS. According to the minutes of a local Stakeholder Call on September 11, 2014 with the Nebraska Service Center regarding business issues, an increase in EAD filings during April and May 2014 have slowed down adjudications (despite annual predictability). NSC notes that it has been working the backlog and expects processing to be current within a few weeks. It would appear that to USCIS, “working the backlog” means increasing the number of RFEs in place of adjudication. This should be a matter for NAFSA liaison concern, as well as through your institutions external affairs political contacts.

4) DOS Reduces Fee for 212(e) Two Year Residence Requirement Waiver; USCIS Publishes Agency Information Collection for I-612

The Department of State has announced that effective September 12, 2014 its fee for I-212(e) waiver applications (opposed to the I-612 fee by USCIS) has been reduced from \$215.00 to \$120.00, along with several other fee adjustments which were published in an interim rule the “Federal Register” of August 28, 2014.

Coincidentally, USCIS published an Agency Information Collection activity in the “Federal Register” of September 10, 2014 with comments due by November 10, 2014 regarding form I-612, the USCIS Application for Waiver of the two years Home Residence Requirement under Section 212(e) of the Immigration Act. This application is generally used for asylum and hardship waivers which are filed directly with the USCIS. USCIS advises that there are approximately 1,300 I-612 applications filed each year. Keep in mind that National Interest Waivers and Interested US Government Agency Waivers are filed directly with the State Department.

5) VSC Newsletter for Summer 2014

The latest edition of the “Vermont Service Center Stakeholders Newsletter” was released on September 25. The lead story is the swearing in of the new VSC Center Director Laura B. Zuchowski on June 30, 2014. The new Center Director mentions that one of her focuses during her first year will be “working closely with our Quality and Training teams.” We wish her the best of luck.

The newsletter carries a reminder that petitioners should include apartment numbers when completing their address.

There's a reminder that the annual VSC stakeholder event will be held on October 24, and that questions can be sent to vsccommunityengagement@uscis.dhs.gov.

There is also a reminder about the California and Vermont Service Center Joint Stakeholder Conference on October 9, 2014 covering H-1B filing tips, and eligibility requirements for religious workers. To register email CSC-CEO@uscis.dhs.gov and reference "H-1B Filing Tips and Religious Workers Engagement RSVP". The newsletter may be found [here](#).

6) USCBP Publishes List of 14 Border Posts Offering "Optimized" TN or L-1 Processing

In mid-September USCBP published a fact sheet "Travelling on a TN or L-1 Visa from Canada?"

The fact sheet answered several questions but specifically listed 14 ports of entry which should be used by TN and L applicants for "optimized" treatment. Apparently, there are specialized officers at those posts. Among these posts are the four preclearance stations including the international airports at Montreal, Toronto, Calgary, and Vancouver.

Other local ports of entry include Alexandria Bay, Peace Bridge, Buffalo, Rainbow Bridge, Niagara Falls, and Champlain, NY. The fact sheet may be found [here](#)

7) CBP To Hire Additional Officers

On September 27, 2014 CBP announced that it would be hiring additional CBP Officers. Applicants will undergo a "rigorous screening process to ensure their eligibility and suitability for employment in a CBP law enforcement position." Applicants must be able to meet the physical demands of the job as well as successfully pass a polygraph test and background investigation, be under 37 years of age, a US citizen residing in the US for the past three years, with a current valid state driver's license, pass an entrance exam, a medical exam and undergo physical assessments; and pass a video-based testing and/or a structured interview, drug testing, and background investigation.

CBP will hire 2,000 additional officers by the end of fiscal year 2015. The announcement may be found [here](#).

8) Blue is the New Red

On September 22, 2014, USCIS announced that it had changed the secure ink color on certain immigration document stamps. The Service will use a secure blue ink as the older secure red ink has been retired and is no longer in use. The blue ink will show up on Parole stamps, temporary greencard stamps, Refugee, and Asylum documents, and on the Initial/Replacement form I-94 stamps. More information may be found on the USCIS website. The announcement may be found [here](#).

9) TPS Extended 18 months for Sudan and South Sudan

On September 2, 2014 DHS announced an 18 month Re-designation and 18 Month Extension of Temporary Protected Status for both Sudan and South Sudan. Their designation will, upon approval of the application, extend TPS status through May 2, 2016. Re-registration must be completed prior to November 3, 2014. Both forms I-821 and I-765 are required for re-registration.

10) Deferred Enforced Departure Extended for Liberians

On September 26, USCIS announced that “Deferred Enforced Departure” for Eligible Liberians had been extended for an additional two years until September 30, 2016. EADs are being automatically extended for six months through March 30, 2016. This extension applies only to those Liberians already in the program since 2007. It has no application for other Liberians concerned about the Ebola epidemic.

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.

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