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MEMORANDUM

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To: International Education Program Administrators

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1) Washington Alliance Case Developments

Our August 19, 2015 Memorandum reported on the August 12th decision of the US District Court of the District of Columbia in Washington Alliance of Technology Workers v. U.S. Department of Homeland Security. The court ruled that the DHS rule which created STEM OPT in 2008 was improperly published and ordered that it be vacated, but stayed its order until February 12, 2016.

On August 18th Washington Alliance filed a Notice of Appeal with the U.S. Court of Appeals in Washington, DC. Washington Alliance disagrees with the court's finding that the creation of STEM OPT was merely a procedural issue, and bases its appeal on whether or not DHS has the actual authority to create the STEM OPT program.

According to NAFSA, DHS is working on publishing a new STEM OPT regulation to cure what the court determined to be procedural defects of the 2008 publication process, and to address other STEM OPT issues. As for the possible course of the litigation, there are many variables and it is premature to speculate.

2) SEVP Publishes Draft Policy Guidance on Off-campus Employment, Emergency Circumstances and International Internships Employment Issues

On August 14, 2015 SEVP published long awaited "Draft Policy Guidance" on all F-1 employment categories other than OPT. Public comments will be accepted until September 28. The "Draft Guidance" may be found [here](#), or through the NAFSA Find Resources page.

A few comments: “Policy Guidance 1307-02: F-1 Off-campus Employment” lists definitions including “Severe Economic Hardship,” as “financial condition caused by unforeseen circumstances beyond the student’s control...” Does this definition include “pregnancy”? The definition also lists “Loss of financial aid or on campus employment through no fault of the student”. What about low grades caused by an excessively heavy program on a learning disabled student? This, later and related issues might better be evaluated by the school.

In regard to eligibility (§5.1) for off-campus employment the student must have been in F-1 status (not just a student in another status such as A, G, H-4, L-2, or E) for one full academic year. However, on the positive side the one year period includes “For a student approved for reinstatement of F-1 status, this may include time enrolled before the SEVIS termination and while the I-539 was pending” but, apparently not cross border reinstatement.

“SEVP Fact Sheet 1307-02A: F-1 Off-campus Employment Processes” discusses the timing of the DSO recommendation and the actual application filing, a serious trap for the unwary:

USCIS must receive the application within 30 days of the date the DSO enters the recommendation in SEVIS or USCIS may deny the application. A student who does not file on time should advise the DSO. If still within the filing period, the DSO can cancel the off-campus employment request, submit a new request and provide a new printed and signed Form I-20 to the student.

“SEVP Policy Guidance 1308-07: F-1 Emergent Circumstances” requires that the applicant “Has been in F-1 status for one full academic year.” Why not merely a bonafide student in another status who changed into F-1 status prior to the emergency? This issue would affect many long term college students who are dependents of parents or spouses in another nonimmigrant category..

Another issue regards continuation of emergency off campus employment during a school transfer, and after release by the transfer school. The student must receive a DSO recommendation from the transfer in school and then file an I-765 employment application. This process could take months, and leave the student without work authorization and without resources.

The Draft Guidances are very complex and must be carefully studied. There are issues of concern, but also positive solutions to long standing issues.

3) SEVP FAQ: Field Representatives

SEVP recently released “Frequently Asked Questions: SEVP Field Representatives.” The FAQ described the general role and duties of the Field Representatives as both service and law enforcement. It also provides general contact data for P/DSOs feedback.

4) EAD & LPR Card Delays

AILA announced on August 27, 2015 that there is a 2-3 week delay after the approval of the underlying application (i.e. I-765, I-485) and production of the card. The delay is due to a backlog of cases at the Lee’s Summit facility due to maintenance being performed at the Corbin, KY card production facility and their transfer to Lee’s Summit. The delay is expected to be resolved during September.

5) SEVP Spotlight

On August 28, we received the August 2015 issue of *SEVP Spotlight* (Volume 5, Issue 3).

We are greeted by Lou’s hirsute countenance in his “Director’s Corner” Column in which he discusses the SEVP “listening session” at the Spring NAFSA Conference and how SEVP will respond for the benefit of all. The *Spotlight* goes on to discuss recent and future releases, student targeted scams, back to school reminders for DSOs and a Q&A by the DSO’s Office of Private Sector Exchange Administration. Of particular interest is a paragraph concerning future SEVIS “enhancements”:

DSOs have more SEVIS enhancements to look forward to later this fall, including updates to the SEVIS event history page; slated to go live in November. DSOs will be able to enter SEVIS information about multiple employers, instead of just one, for a student participating in optional practical training. In addition, SEVP will improve users’ ability to view a student’s record history in SEVIS. Currently, the event history page summarizes updates made to a student record since it was created, but the page does not always provide enough detail. Come November, the improved event history page will specify changes made to a student’s SEVIS record, including what was listed both before and after the update, making it easier for DSOs to see what student information has changed.

6) ICE Discusses Out Arrest Priorities for F-1 Overstays

The minutes of an AILA/ICE Liaison Committee meeting held on June 19, 2015 include a series of hypothetical circumstances which would cause the arrest and detention of an F-1 or J-1:

[Q] Please indicate whether (and if so, why) the following examples qualify as significant visa abuse necessitating arrest and detention:

- An F-1 student has attended school in the U.S. for several years. Although he is taking classes, he has dropped below full-time status and is not taking the requisite amount of credits. He does not have a criminal history, nor has he worked without authorization.
- An F-1 student has attended school in the U.S. for several years. He is carrying a full course load, however, he has not been attending classes. He does not have a criminal history, nor has he worked without authorization.
- A J-1 visa holder is married to a U.S. citizen and maintained J-1 status for more than a decade, until recently while in the process of applying for a J-1 waiver as a Fulbright scholar. After the J-1 waiver was approved by the State Department and USCIS, but before the family-based application to adjust status was filed, this individual was arrested.
- An F-1 student has signed an enlistment contract in the Army's MAVNI program, but has to drop classes before reporting to Basic Combat Training.

[A] Simply being an F-1 student visa overstay without additional negative equities (criminal issues, etc.) does not make someone an enforcement priority for ICE OCC or ERO. However, after the 9/11 attacks, ICE HSI is mandated to review every single visa overstay and determines who it needs to investigate based on certain criteria. Arrest and detention of F-1 student visa overstays have been carried out by ICE HSI.

7) Forms Developments

◆USCIS Discontinues Legacy E-Filings

On August 24, 2015 USCIS announced that it:

Will discontinue its legacy e-Filing system in order to maintain data security standards and focus resources on the replacement Electronic Immigration System. The legacy e-

Filing system has offered online filing for several USCIS forms. After the system is decommissioned, you must use paper forms when filing all categories of:

- Form I-131, Application for Travel Document
- Form I-140, Immigrant Petition for Alien Worker
- Form I-765, Application for Employment Authorization
- Form I-821, Application for Temporary Protected Status
- Form I-907, Request for Premium Processing Service

It may be recalled that the “Replacement Electronic Immigration System” will also replace ELIS, and is not expected to be in place before 2018, at best.

◆USCIS Announces Deadlines for Submission of Prior Editions of Forms

On August 17, USCIS announced that changes had been made to several forms and that revised versions are now available for use. The announcement also provided the final day on which old versions of the forms would be accepted. Of interest is that the new version of Form I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212 (e) of the Act) must be filed after September 24, 2015.

◆USCIS Releases New I-129 with Revised Preparer’s Declaration

Over the last year USCIS has been very busy revising its forms to include a “Preparers Declaration” which has been severely criticized as being a trap for the preparer which would only be used for overzealous prosecution of lawyers and others (including DSOs) who may prepare USCIS forms. Apparently, the Office of Management and Budget (OMB) has agreed with the criticisms and a new declaration has been approved for a new I-129 edition.

The old declaration was:

By my signature, I certify, swear or affirm, under penalty of perjury, that I prepared this form on behalf of, at the request of, and with the express consent of, the petitioner. I completed the form based only on responses the petitioner provided to me. After completing the form, I reviewed it and all of the petitioner's responses with the petitioner, who agreed with every answer, provided for every question on the form and, when required, supplied additional information to respond to a question on the form.

The new declaration is:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or authorized signatory.

The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents, is complete, true, and correct.

It appears that OMB has caused USCIS to relax.

♦ DOS Announces New SEVP I-20 and DS-2019 Changes and Acceptability Dates

On August 20, 2015 the Department of State released an update to the Foreign Affairs Manual which discusses the new edition of Forms I-120 and DS-2019 and states that: "Consular Officers can accept the previous forms if issued on June 26, 2015, or earlier, until July 1, 2016 when only the new forms will be valid.

The FAM revision also discusses the specific form changes. The revision may be found [here](#).

♦ CBP Publishes Biometric Identity Entry/Exit System Paperwork Review

The August 18, 2015 edition of the Federal Register carried a request for comments by CBP prior to OMB review of its biometric based entry/exit system which collects digital fingerprint scans photographs, facial images and iris images and other identifiers from entering "aliens" and "non-exempt, non-U.S. citizens". The notice maybe found [here](#).

8) TPS and F-1 Hardship Employment Extended for Haiti

The Federal Register of August 25, 2015 carried notices from USCIS and ICE that Temporary Protected Status would be extended for Haiti for an additional 18 months from January 23, 2016 through July 22, 2017. Reregistration must take place between August 25 through October 26, 2015. Current EAD expiration dates are being automatically extended from January 22, 2016 to July 22, 2016. Severe economic hardship resulting from the January 12, 2010 earthquake are being permitted to continue employment authorization, increased employment hours and minimum courseload adjustments until July 22, 2017. The Federal Register notice may be found [here](#).

9) Stakeholder Events

♦ NSC Students and School Teleconference

The Nebraska Service Center will hold its next teleconference on Thursday September 10, 2015 10:00am (Central). Subjects to be discussed and deadlines are found in the notice.

♦ VSC Stakeholder Event

The Vermont Service Center announced that its 2015 Fall Stakeholder Conference will be held at the VSC office in Essex, Vermont on Friday, September 18, 2015. Unfortunately, on August 25, VSC announced that capacity has been reached. Looks like its too late to get a Bernie Sanders campaign button.

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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