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March 7, 2012

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MEMORANDUM

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To: International Education Program Administrators

Spring is coming—and for many students so is 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.

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Department of State Developments

1) Pilot Program for Visa Renewals

On January 19, 2012 the U.S. Department of State, Office of the Spokesperson published a “Fact Sheet” regarding the “Visa Pilot Program.”

Some of you may recall that after 9/11, a personal appearance requirement was instituted for most visa applications. The just announced pilot program relaxes some of these requirements, or expands the narrow exceptions. Individuals previously interviewed and thoroughly screened regarding prior applications may no longer be required to undergo an interview. These include individuals renewing expired visas in certain categories and younger or older first time applicants. The fact sheet notes that applicants in Brazil and China will especially benefit. Specifically, F, M, and J applicants who are renewing their visas to continue participation in the same program, or attend the same institution are eligible. Waiver is permitted for those applicants renewing visas more than twelve months, but less than forty eight months from the expiration of the prior visa. Individual consular posts have the option to broaden the non-immigrant visa categories beyond B, F, M, and J.

The pilot program will be held over a two year period, ending on January 19, 2014. However, no waivers will be permitted for individuals who we previously refused a visa, are listed in the Consular Lookout and Support System (CLASS), require a Security Advisory Opinion, have failed to comply with U.S. immigration laws in the past, or are a national of a country designated as a state sponsor of terrorism.

2) Developments for Syrian Students

NAFSA has released a summary of resources for DSOs regarding issues in Syria, especially noting the DOS Travel Warning of February 6th; that the U.S. embassy in Damascus has suspended operations and that neither U.S. passports nor visas to the U.S. will be issued from Damascus. The visa issuing post being used in place of Damascus is Amman, Jordan.

Ice Developments

1) Secretary Napolitano Announces Formation of Academic Advisory Council

On March 1, 2012 Homeland Security Secretary Napolitano announced the creation of an Academic Advisory Council “comprised of prominent university presidents and academic leaders charged with advising the Secretary and senior leadership at the Department on several key issues.” The news release goes on to state that the council “...will be chaired by Dr. Wallace Loh of the University of Maryland, to provide advice and recommendations on issues related to student

and recent graduate recruitment; international students; academic research; campus and community resilience, security and preparedness; and faculty exchanges.” The council’s first meeting is scheduled for March 20th in Washington, D.C. Among the members of the committee which is known as HSAAC is Marlene M. Johnson, the Executive Director and CEO of NAFSA. The announcement may be found [here](#).

2) ICE Announces New Position – Public Advocate

On February 7, 2012 ICE announced the appointment of Andrew Lorenzen-Strait as its first Public Advocate and Senior Advisor. The mission states that “As ICE continues to implement detention reforms and other enforcement – related initiatives, [the public advocate] staff...will serve as a point of contact for individuals, including those in immigration proceeding, NGOs, and other community and advocacy groups, who have concerns, questions, recommendations or important issues they would like to raise.” Mr. Lorenzen-Strait joined ICE in 2008 as an advisor and analyst on policies related to immigration enforcement, detention and juveniles, and most recently as Senior Advisor for the Enforcement and Removal Operation’s Detention Management Division. The specific duties set forth in the announcement are:

- Assist individuals and community stakeholders in addressing complaints and concerns in accordance with agency policies and operations, particularly concerns related to ICE enforcement actions that affect U.S. citizens;
- Inform stakeholders on ERO policies, programs and initiatives, and enhance understanding of ERO’s mission and core values;
- Engage stakeholders and build partnerships to facilitate communication, foster collaboration and solicit input on immigration enforcement initiatives and operations; and
- Advise ICE leadership on stakeholder findings, concerns, recommendations and priorities as they relate to improving immigration enforcement efforts and activities.

Unfortunately, the announcement does not include any specific method for contacting the Public Advocate. There also appears to be an issue that as Mr. Lorenzen-Strait came from a background in detention enforcement, that he will be able to demonstrate the appropriate level of independence required as a “Public Advocate.” A news article from the *Huffington Post* may be found by clicking [here](#).

3) SEVP Broadcast Message I201-04 – Batch Failures

On February 1, 2012 SEVP circulated Broadcast Message 1201-04 regarding SEVIS performance regarding problems with SEVIS. The message discussed failures of batch uploads and downloads and notes that software failures have been corrected: timeouts of batch uploads and downloads have supposedly been

addressed together with random processing errors. However, there remains an open item regarding unexpected disconnection from the application which may cause errors or slow response times which may also cause latency or service unavailable messages when uploading or downloading via batch. Users are advised to contact the SEVIS help desk under MasterTicket5594008 to monitor performance or for the diagnostic.

4) SEVP Broadcast Message 1202-01 “Certified Schools List” Moves to “Study in the States” Website

On February 29, 2012 SEVIS released Broadcast Message 1202-01 which states that SEVP has moved the SEVP-Certified Schools List from the SEVP Homepage to the “Study in the States” website. It is noted that users of “Study in the States” may search for certified schools by name, city or state. The link to the Certified Schools list is <http://studyinthestates.dhs.gov/school-search/>.

USCIS Developments

1) White House Initiative to Attract and Retain Highly Skilled Immigrants

On January 31, 2012 DHS announced a reform to attract and retain highly skilled immigrants. Although it was announced that the President supports legislative measures which would create jobs and boost competitiveness including a Start-up Visa, strengthening the H-1B program and “stapling” green cards to the diplomas of certain foreign-born graduates in the STEM fields, the administration at this time, could only offer “a series of administrative reforms which will be completed in the future.” These intended reforms include:

- Expand eligibility for 17-month extension of optional practical training (OPT) for F-1 international students to include students with a prior degree in Science, Technology, Engineering and Mathematics (STEM).
- Allow for additional part-time study for spouses of F-1 students and expand the number of Designated School Officials (DSOs) at schools certified by DHS to enroll international students.
- Provide work authorization for spouses of certain H-1B holders.
- Allow outstanding professors and researchers to present a broader scope of evidence of academic achievement.
- Harmonize rules to allow E-3 visa holders from Australia and H-1B1 visa holders from Singapore and Chile to continue working with their current employer for up to 240 days while their petitions for extension of status are pending.

- Launch Entrepreneurs in Residence initiative.

To date, none of these reforms have seen any concrete developments. Whether or not any of these reforms will actually be accomplished will depend on the obdurate attitude of bureaucrats within USCIS who, have relatively recently eliminated the ability of individuals to form a corporate entity which may be used to set up a small business which will in turn petition for that individual. They have also continued restrictive entrepreneur visa regulations-all in announcements-which purport to create jobs, but in effect, do not.

2) CSC/AILA Discuss Student Issues

The AILA minutes of the California Service Center Quarterly Stakeholders Engagement Meeting held on November 8, 2011, among other items, carried several issues of interest.

- There has been no change of policy regarding change of status to B-2 from H-1B or L-1 if the individual had been laid off and is seeking to change status in order to gain time to enroll in a school. It was noted that “applicants must state the purpose of the requested change of status and USCIS takes into consideration all factors in its discretionary determination.”
- USCIS will not grant a change of status for more than thirty days prior to the start date of an academic program.
- In regard to a question as to CSC policy for coordination of adjudications of related I-539s including those of other family members, it was noted that “CSC makes all reasonable efforts to process related I-539 applications together.”
- In reply to a question regarding the necessity to submit a new I-20 when a start date needs to be deferred because a case is pending with USCIS, CSC replied that USCIS is able to see the deferred start date on SEVIS and a new I-20 is not necessary.
- In regard to I-765 adjudications, it was noted that copies of all I-20s should be included and that in a STEM extension, the e-verify number must be on the form.
- In a question regarding whether an individual in B-1/B-2 status may attend an ESL program, it was stated that if the course is incidental to stay, this is permissible, but “ESL will tend not to comply with being incidental, nor would courses that lead towards a degree.”

- It was also noted that for F-1 reinstatement it is only necessary to submit the original I-20 for the current institution, and copies of the I-20 from prior institutions.
- In regard to J-1 changes of status it was asked:

Q. Change of Status to J-1 are being approved for 30 days in advance of start date even though that may conflict with the applicant's desire to complete another status, e.g., using their full period of F-1 OPT.

A. Please indicate in correspondence filed with the application if you require that the change of status not take effect until a certain date within that 30 day range.

- Filing tips regarding I-612 J-1 waiver applications was listed:
 - All forms IAP-66 or DS-2019 must be clearly legible; if you can't get a clear copy, you should forward the original to CSC or get copy from program sponsor;
 - Evidence of applicant's first entry to the US and a copy of the J-1 visa and copies of dependents' status documents are required;
 - The hardship standard is that the applicant must experience hardship both domestically and abroad; it has to be both, cannot show just one or the other. Evidence should be detailed and specific to the individual. Country reports are not sufficient. With respect to economic hardship, show financial documents, e.g., bank statements, evidence that the individual will not be able to support themselves. For medical hardships, letters from physicians are helpful but, while detailed, should be couched in layman's terms so they can be understood.
 - Persecution waivers - it is important to establish how country conditions have worsened over time since the applicant has been in the U.S. and include a detailed statement how the applicant believes the applicant would subject to persecution in the home country. They should also document if there has been any prior I-589 filing.

3) NSC Stakeholder Engagement on Students and Schools Cancelled

On March 1, 2012 it was announced that the National Service Center Stakeholder Engagement on student and schools has been cancelled. This teleconference, apparently, was cancelled because of a lack of agenda items.

4) VSC Explains How "Processing Times" are Calculated

Volume I Issue 9, the February, 2012 edition of the Vermont Service Center Stakeholder's Newsletter included an interesting paragraph which describes the calculation of processing times within the context of requesting expedited processing:

Processing times for specific applications and petitions at the Vermont Service Center (VSC) are provided on the www.uscis.gov website. Based on fluctuations and variables that impact the processing times and for the purpose of interim or final adjudicative processing, the VSC allows 30 days beyond the posted date before the case is considered "Outside of Normal Processing Time" (ONPT). That additional 30 days allows for adjudicative review. If the application or petition is still pending after 30 days, and we receive your formal request for expeditious processing, your case will be forwarded to the applicable adjudicative unit for expeditious handling.

In other words, one should always add an additional thirty days to the times set forth in the posted processing times.

Another section of the newsletter notes that it is a very good practice to provide a copy of a valid photo I.D. document with every I-765. Generally, this would be the biometric page from the applicant's passport.

5) "Transformation" Still on Hold

The January Bulletin for "External Data Interface Standards (EDIS) dated January 2012 noted that the EDIS implementation time frame had been "revised." The January Bulletin states that "USCIS will continue to provide information to our EDIS stakeholders regularly." Nothing was noted as to specific release dates.

6) National Foundation for American Policy Analysis Shows Increase in H-1B RFE and Denial Rates

An undated report from the National Foundation for American Policy entitled "Analysis: Data Reveal High Denial Rates for L-1 and H-1B Petitions At U.S. Citizenship and Immigration Services" was recently released and may be found at www.nfap.com. The analysis reveals that denial rates for H-1B petitions for all nationalities increased from 11% in FY2007 to 29% in FY2009 and that these denial rates remained higher than the historical pattern for H-1Bs at 21% in FY 2010 and 17% in FY 2011. It was noted that these figures include both renewals and initial filings.

Denial Rates for H-1B Petitions (All Nationalities)

Year	H-1B Denial Rate
FY 2003	12%
FY 2004	11%
FY 2005	12%
FY 2006	13%
FY 2007	11%
FY 2008	16%
FY 2009	29%
FY 2010	21%
FY 2011	17%

It was also noted that O-1A extraordinary petition denial rights increased from 4% in FY2008 to 10% in FY2009 with an increase to 11% in FY2010 and a subsequent drop to 8% in FY2011.

The rate for RFEs for H-1s rose from 4% in FY2004 to 18% in FY 2007 to 35% in FY2009. FY2010 showed a drop to 28% and FY2011 to 26%.

USCIS Rate of Requests for Evidence for H-1B Petitions

Year	Request for Evidence Rate for H-1B Petitions
FY 2003	15%
FY 2004	4%
FY 2005	12%
FY 2006	15%
FY 2007	18%
FY 2008	20%
FY 2009	35%
FY 2010	28%
FY 2011	26%

These figures were taken from the USCIS database and indicate an increased institutional bias against approvals, though the O-1A denial rates was somewhat ameliorated by industry pressure. Whether these statistics will have any impact upon USCIS adjudications will depend on public response.

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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