

**LAW OFFICES OF
EUGENE GOLDSTEIN AND ASSOCIATES
150 BROADWAY, SUITE 1115
NEW YORK, NY 10038
212-374-1544
Fax 212-374-1435
EGLAW@AOL.COM
<http://www.eqlaw-group.com>**

March 1, 2013

**Lawrence Goldstein
Lucy G. Cheung
Michael J. Goldstein**

MEMORANDUM

Jacqueline Singh
Ana Pena
Legal Assistant

The spring semester is upon us, and many of your students are looking forward to life after F-1. As many of you know, our firm provides “Life After F-1” presentations at schools. Before your students enter the real world, please let us know, if you would like us to come to your campus to do a presentation for them.

To: International Education Program Administrators

- 1) “SEVP Spotlight” for January 2013, Volume 3, Issue 1
- 2) NAFSA Publishes Web Teleconference with Recent Appointee Robin Lerner, Deputy Assistant Secretary for Private Sector Exchange of the DOS Bureau of Education and Cultural Affairs
- 3) USCBP Publishes Guidelines for Enforcement Actions at or Near Certain Community Locations
- 4) USCIS California Service Center Invitation
- 5) DOS Publishes Data Collection Notice on Electronic Diversity Form
- 6) USCIS Consolidates On-Line I-539 Filing with ELIS
- 7) Lots of Statistics
 - a) Department of Labor FY 2013 YTD PERM Statistics
 - b) USCIS 8/12-2/13 DACA Statistics
 - c) USCIS ELIS Statistics
- 8) This Year’s Immigration Reform

1) “SEVP Spotlight” for January 2013, Volume 3, Issue 1

SEVP has released Volume 3, Issue 1 of “SEVP Spotlight” for January 2013.

The publication spotlights the agency’s response to a highly critical GAO audit, and is best interpreted if one can understand the foreign language known as bureaucratic gobbledygook. In essence, Director Louis M. Farrell confesses to a lack of objectives and methodology to reach those objectives in the past, and promises to better define the mission of the agency in order to better determine high risk schools, and provide its “external stakeholders” with notices of changes.

In other words SEVP promises to better define its mission based on specific criteria, and to let the community which it regulates know what is expected of it. In order to fulfill these goals SEVP has promised to work with the international student community and has accepted over 23 recommendations from the Homeland Security Academic Advisory Council made up of university leaders from across the United States.

However, the agency’s culture is reflected by the statement on page 3 that:

DSOs have the responsibility to ensure that the foreign students invited to the United States intend to be productive students. A foreign national may view a student visa as a means of immigrating to the United States rather than achieving an academic goal. It is important to identify a situation before it becomes a national security concern.

According to SEVP, the F-1 or J-1 must not show any intention of a desire to remain in the United States. A desire to remain and practice what they have learned as a student in the U.S. is equated with a national security problem. This statement may be compared with that of the President who has noted on numerous occasions that STEM individuals should be encouraged to remain in the United States and that forcing them to return to their home country to compete with the United States is illogical. Further, a bill recently proposed in the Senate, would eliminate Section 214(b) of the Immigration Act, the origin of the non-immigrant intent requirement (more on this later in item 8).

2) NAFSA Publishes Web Teleconference with Recent Appointee Robin Lerner, Deputy Assistant Secretary for Private Sector Exchange of the DOS Bureau of Education and Cultural Affairs

NAFSA recently carried the minutes of a web-based teleconference with Robin Lerner, the recently appointed Deputy Assistant Secretary for Private Sector Exchange at the U.S. Department of State's Bureau of Educational and Cultural Affairs. It may be noted, that after many years in the position, Stanley Colwin, has disappeared without a word - or trace.

Ms. Lerner discussed her role in managing programs in which almost 300,000 people participate annually, of which 85% are under age 30, with more than 50% female, and about 21% participating in STEM programs.

The discussion specifically highlighted the need for participating institutions to: ... "please make sure to include the cultural component, activities in which Exchange Visitors (EVs) were engaged and evaluations ... [of these programs]". It sounds as if she was making a pitch for One to World to be a part of the participant's annual reports.

Among Ms. Lerner's goals are to have her Office of Designations staff get out into the field and visit sponsors, participate in conferences and set out the DOS vision for the program-something that has not been done in many years. Ms. Lerner also wants to be more responsive to sponsors and highlight notable alumni activities, as well as deal with day to day bureaucratic functions. Of interest, she particularly rejected setting out guidance in draft form as is done by USCIS. She recognizes the requirement for notices of proposed rulemaking under the Administrative Procedure Act. The discussion may be found [here](#).

3) USCBP Publishes Guidelines for Enforcement Actions at or Near Certain Community Locations

USCBP has issued a Memorandum dated January 18, 2013 regarding "Enforcement Actions at or Near Certain Community Locations."

It may be recalled that this guidance was issued on at least two prior occasions, and specifically addressed USCBP enforcement activities "... at or near schools, places of worship, and certain other community locations..." which has been a sensitive issue. The Memorandum specifically mentions "schools, including pre-schools, primary schools, secondary schools, post-secondary schools, vocational or trade schools, and colleges and universities..." The Memorandum states that:

CBP personnel should consult their supervisors for guidance when an enforcement action is being contemplated or planned at or near a location not specifically listed above but that may be similar in nature, description, or function. In assessing the appropriateness of a proposed action, supervisors should consider alternative measures that could achieve the

enforcement objective without causing significant disruption to the normal activities or operations at the identified location, including the importance of the enforcement objective in furthering CBP's mission.

The Memorandum requires escalation to high level supervisory staff before enforcement actions are executed against these sensitive sites although situations are recognized where urgency may require immediate action. Of course, this Memorandum is internal to CBP and specifically notes that it does not create any rights which can be relied upon by any outside party. However, the target institution always has the right to ask for and review the authority of any investigating officers.

4) USCIS California Service Center Invitation

The USCIS CSC has invited individuals to participate in a day-long stakeholder engagement on Wednesday, April 10, 2013. The engagement is designed to provide an opportunity for stakeholders to meet with USCIS offices to discuss student and academic immigration issues. Topics for discussion include I-129 petitions and I-765 and I-539 application, trends in higher education, and technology issues such as e-filing and SEVIS/CLAIMS interfaces.

Click [here](#) for the invitation and instructions for those who wish to participate in the engagement. For those unable to attend, the invitation includes instructions on how to submit agenda items.

5) DOS Publishes Data Collection Notice on Electronic Diversity Form

On February 21, 2013, the "Federal Register" carried a Notice of request for public comment for information collection regarding the "Electronic Diversity Visa Entry Form." Of interest, it is mentioned that there are 6 million respondents each year, which means that 6 million individuals file diversity lottery applications. Considering the fact that there are approximately 55,000 places each year, the statistical chance of winning is .0091666. Good luck.

6) USCIS Consolidates On-Line I-539 Filing with ELIS

USCIS has announced that, as of February 28, 2013, it will disable the alternative legacy online filing channel for form I-539. This form will now only be accepted under ELIS or as a paper application by snail mail.

7) Lots of Statistics

a) Department of Labor FY 2013 YTD PERM Statistics

The Department of Labor recently issued its Office of Foreign Labor Certification PERM statistics for its first quarter. DOL received 16,724 PERM applications, of which 37% are placed under audit review, 48% are merely analyst reviewed, and 14% are appeals. During the first quarter 12,123 PERM applications were approved. The top five PERM application occupations are Computer and Mathematical (7,397), Agriculture and Engineering (1,751), Management (1,200), Business and Financial Operations (952), and Education, Training and Library (694).

The top 5 worksite states are California, Texas, New Jersey, New York, and Massachusetts.

83% of the applications were by individuals in H-1B or H-1B1 status. Of the beneficiaries, 57% were from India, 7% from China, 5% from South Korea, 5% from Canada and 3% from the Philippines.

44.97% of the applications required an advanced degree.

b) USCIS 8/12-2/13 DACA Statistics

Between August, 2012 through February 19, 2013 USCIS received 438,372 DACA applications of which it accepted 423,634. It approved 199,460 but did not state how many were denied.

Mexico continues to be the top country of origin with 313,722 applications. By comparison El Salvador is the next with 17,662 applications.

California had 119,466 applicants, Texas 68,005 and New York 24,585. New Jersey had 13,374.

c) USCIS ELIS Statistics

USCIS has advised that, to date, it has received 10,706 primary applicant petitions plus 1,058 filed by representatives. It has issued 11,048 receipts and 2,419 Requests for Evidence, with 788 denials and 5,598 approvals. It would appear that this leaves 2,243 ELIS petitions pending (not that anyone is counting).

These cases are currently limited to form I-539 benefits.

8) This Year's Immigration Reform

According to all the talking heads, this is the year that positive immigration reform will happen. One major proposal by the "Gang of Eight" set forth principles for an amnesty which was set forth in a Senate news conference on January 28, 2013. Additional principles set forth business issues regarding backlog reductions in family and employment categories and STEM greencards as well as stiffened employer sanctions.

However, an actual bill filed in the Senate by Senator Hatch does not provide any amnesty relief, but does provide a realistic approach to fix the broken system. Mr. Rubio, the conservative Hispanic Republican Senator of water bottle fame, is also a sponsor. The draft bill covers many issues but specific to student visas, strikes the language in Section 214(b) of the Act which requires that the F-1 applicant have a home residence "from which he has no intention of abandoning."

It should also be mentioned that although the sponsors claim not to be adding any employment based numbers, their methodology eliminates the counting of numbers against spouses and children. This new methodology is expected to add 55% more places for principal applicants.

Also of interest is the statutory requirement that the State Department have a program to revalidate E, H, L, O, and P visas within the United States, a procedure which DOS had eliminated many years ago.

Various other benefits would be made including positive adjustments in the counting of per country numerical limitations, recapturing of lost employment based immigrant visa numbers from previous years, and funding for STEM education and training, as well as a STEM application process for greencards.

Further, H-1B visas would not be arbitrarily limited, but would be based on an economic demand-based scheme. Spouses in H-4 status would also be permitted work authorization.

It is very interesting that the bill proposed by Senator Hatch is separate from the "Gang of Eight" amnesty proposals. The immigration debate in Congress promises to be an interesting one.

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.

Note: 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.