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MEMORANDUM

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To: International Education Program Administrators

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1) DOMA Developments

The Supreme Court's recent decision *United States v. Windsor*, which overturned the Defense of Marriage Act's (DOMA) definition of marriage as being only between a man and a woman, will have a major legal impact involving issues of immigration law, as well as laws involving taxes, estates, social security, and state and federal benefits.

In the immigration law context, it has been estimated that there are approximately 24,700 same sex bi-national couples in the United States with approximately 6,200 of these couples raising more than 11,000 children.

The major news is the unprecedented speed of same sex marriage legal implementation. Virtually immediately after the Supreme Court decision, the administration directed the relevant government agencies to take immediate action. The Homeland Security and State Departments both published statements that the agencies would immediately implement new policies. In fact, the Board of Immigration Appeals, the administrative appellate agency providing precedential enforceable directives to the immigration agencies has already published *Matter of Zeleniak* on July 17, 2013 as Interim Decision 3787, 26I&NDec.158. The decision held that an immigrant visa petition by a U.S. citizen for his same sex spouse which had been denied under DOMA should be approved by USCIS as a result of the Supreme Court decision.

USCIS has been accepting spousal immigrant green card petitions and applications in the same way that they have always accepted spousal petitions and applications for opposite sex marriages. However, to this date no instructions or regulations have been published by any relevant agency – except for two sets of FAQs (which may be found [here](#) and [here](#)). However, it should reasonably be expected that we will soon be seeing same sex F-2 dependants, including children, as well as J-2 employment applications. USCIS will be recognizing same sex marriages from any jurisdiction in which they are legally performed-whether the jurisdiction is a U.S. state, or a foreign country. Same sex marriage is presently permitted in more than a dozen countries: Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, the Netherlands, Norway, Portugal, Spain, South Africa and Sweden, as well as some parts of Mexico. Uruguay and New Zealand

have already enacted laws legalizing same sex marriage which will come into a force this month.

However, *Windsor* only applies to same sex marriages. It does not apply to civil unions or same sex partnerships, even where the relationship is the functional equivalent of a marriage. Bringing these relationships under the same status as “marriage” is the next battle. In any event, various Department of State, and Homeland Security regulations permitting individuals in non marriage long term registered relationships to enter the United States in tourist status will continue.

Many issues remain to be worked out including practical issues in proving a bona fide same sex relationships, which did not have a history of joint tax returns, or which had been closeted; burden of proof issues regarding spousal abuse; asylum issues and confidentiality for asylees coming from countries where same sex relationships are criminalized; waivers based on spousal relationships; step child benefits; and various non-immigrant change of status or extension concerns.

It is also to be noted that implementation of the Supreme Court decision will be a function of political will and perspective. Should a socially conservative administration come into power, regulatory formulation and implementation could easily be affected unless Congress legislates statutory changes in line with the *Windsor* decision - a very speculative prospect at this moment.

2) [AILA CBP Liaison Committee Publishes Practice Pointer for Tips to Locate and Print Automated Form I-94](#)

AILA, through its CBP Liaison Committee has issued a Practice Pointer for Tips to Locate and Print Automated Form I-94. As many of you are not AILA members (and will be unable to access their link), the following is a copy of some of their most relevant tips. NAFSA has issued similar tips as well.

United States Customs and Border Protection (CBP) has fully implemented its program to automate Form I-94 at all air and sea ports pursuant to the agency's interim final regulation. As such, follow the tips

below for locating and printing the Form I-94 via CBP's automated system at www.cbp.gov/I94.

1. I found my client's I-94 on the CBP website. What should I do next?

- Print the Form I-94 each time that the nonimmigrant alien arrives in the U.S.²
- Verify that the information on the Form I-94 is correct. The Form I-94 may be needed for I-9 compliance in future immigration petitions or applications and/or to apply for other benefits, such as a social security card or a driver's license.

2. I cannot locate the Form I-94 on the CBP website, and instead, I received a "Not Found" message. What should I do next? It is possible that the Form I-94 does not exist because of a system error. However, it is more likely that the Form I-94 is in the CBP system, but the data is formatted differently than you entered it, so the I-94 is "hiding." Below are some tips to assist you in obtaining the Form I-94 out of the CBP automation system.

• First, Ensure data is entered correctly in all applicable fields.

a. Enter the name as stated in the passport, visa, or the submitted Form DS-160. Although CBP has stated it would draw the name for the Form I-94 from the travel document (e.g., passport biographic page), that is not always the case. The instructions on CBP's website state that the name is drawn from the visa, if any. Therefore, check the passport, visa, and a copy of the submitted Form DS-160 (if available) for name variations. Try entering the name as stated on each document.

b. Enter the first and middle name in the First Name field. In the first name field, type the first and the middle name (if any) with

a space in between. Do this even if the middle name is not stated on the passport or visa.

c. Switch the order of the names. Switch the last and first name when entering the information on the website. Some countries state the name in the passport as first name, last name, rather than the more standard order of last name, first name. This may cause the name to be recorded incorrectly in the CBP system.

d. Enter multiple first names or multiple last names without spaces. If a person has two first names or two last names, type the first names without a space between them or the last names without a space between them. Example: type the first names “Mary Jane” as “Maryjane”

e. Check for multiple passport numbers. Check the Form DS-160 (if available) for the passport number stated. If the passport number on the Form DS-160 is different than the passport number on which the person was admitted, type the passport number as stated on the submitted Form DS-160. Also, check the passport number stated on the visa. If the passport number is different than the current passport, enter the passport number stated on the visa.

f. Do not enter the year if included in the passport number. Some passport numbers may begin with the year in which the passport was issued, causing the number to be too long for the relevant field in CBP’s automation system. If relevant, try entering the passport number without the year. For example, a Mexican passport that was issued in 2008 may have a passport number that starts with “08” followed by nine digits. Try entering the passport number without the “08.” This problem should not arise

for newer Mexican passports, as those passports do not begin with the year.

g. Check the Classification. Check the classification designated on the visa and compare it to the classification stated on the admission stamp in the passport, as there may be a slight variation. Be sure to try both designations. For example, the visa may state “E-3D” for an E-3 dependent, but the admission stamp may state only “E-3.” The automated I-94 could state the classification either way.

- **Call or visit the Deferred Inspection office.** If none of the above efforts resolve the issue, telephone or visit the CBP Deferred Inspection Office and explain the problem. Some of the Deferred Inspection Offices have been able to resolve the problem over the phone without an in-person visit; however, other offices may require an in-person visit with the nonimmigrant alien. Contact information for the Deferred Inspection Offices can be found on CBP’s website.

3) Immigration “Reform” Developments

Although the Senate has passed a comprehensive immigration reform bill, the House has yet to act. Whether the House passes immigration legislation in a comprehensive, or in a piecemeal form is an open question. At the moment the House has actively pursued positive changes regarding “business” immigration issues including non-immigrant and immigrant eligibility, and quotas as well as some version of a DREAM Act. The House has not supported any form of legalization. As the House will be in recess for most of August and will also be dealing with budget issues in September, the best guess is that nothing is to be expected from the House until late September or October-if at all. At that point, whatever is passed in the House would go to a conference committee with the Senate where one common statute would be hammered out to reconcile the differences between the House and Senate products. This process would result in a conference bill

which would then be returned to each house for a straight up or down vote. We have a long way to go.

4) DACA Monthly Filings

From August 15, 2012 through June 30, 2013 USCIS has received 557,412 DACA applications, of which it has accepted 537,662. USCIS approved 400,562 and 5,383 were denied. USCIS projects a processing time goal of 6 months.

Mexico continues to be the top country of origin with 408,759 applications. By comparison, El Salvador is next with 20,744 applications.

California had 152,855 applicants, Texas 88,187, and New York 28,910. New Jersey had 15,732, still within the top ten.

It would appear that DACA applications continue to decline. The USCIS statistical chart may be found [here](#).

5) CBP Ends I-20 Stamping

According to a recent AILA national survey it has been determined that the USCBP practice of stamping I-20s has been terminated throughout the United States. No local offices will be stamping I-20s. Hopefully, local state agencies needing this form of evidence have modified their procedures. Should there be issues regarding printouts of entry records from USCBP.gov, the local CBP office should be contacted.

6) CSC to Hold “Academic Community Engagement”

USCIS has announced that the California Service Center in Laguna Niguel, California will be holding an “Academic Community Engagement” on Monday, August 12, 2013 from 8:30am to 4:00pm (Pacific Time). The notice mentions that the “engagement will provide an opportunity for stakeholders to meet with USCIS to discuss student and academic related program issues.” Representatives from NAFSA, ICE, SEVP, and various DSOs are scheduled to present and share information and answer questions regarding the I-

129 petition, I-765 employment authorization applications, and I-539 applications to change or extend non-immigrant status, as well as immigration trends in higher education. Following the engagement session, tours will be offered of the California Service Center. The engagement is in person only. Those wishing to attend must email the Service Center by August 6, 2013. A copy of the announcement and specific information may be found [here](#).

7) Voice of America Publishes Name Pronunciation Guide

It has recently come to our attention that the Voice of America has published a name pronunciation guide for individual and place names for those of us who have difficulty pronouncing foreign names. This very useful tool may be found at <http://names.voa.gov/>.

Now, if only USCIS would bring this pronunciation guide to its personnel.

8) VSC Publishes Summer 2013 Stakeholders Newsletter

The Vermont Service Center has published its Summer, 2013 Newsletter. A couple of items are of interest including the fact the VSC has added nearly 200 employees since the beginning of the 2013 fiscal year bringing its total staffing level to more than 900 federal employees. Just think of all those additional RFEs we can expect.

The Newsletter also mentions that after the H-1B cap of 65,000 was met within the first week, the USC Business Division held a barbecue for managers, supervisors and senior officers in both the St. Albans and the Essex locations “to thank their staff for all their hard work during the cap season.” The question is, whose butt got barbecued?

Many thanks for your comments, your suggestions and your confidence in 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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