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MEMORANDUM

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To: International Education Program Administrators

- 1) DAPA, DACA (Version 2) Enjoined by U.S. District Court in South Texas
- 2) Limited H-4 Work Authorization Regulation Published
- 3) H-1B Season Has Arrived
- 4) Revised I-129 Form Available
- 5) How an Employer can Document Cap Gap Employment
- 6) Nebraska Service Center Teleconference on Students, School and Other Issues set for March 12.

1) DAPA, DACA (Version 2) Enjoined by U.S. District Court in South Texas

As widely reported in the press, a United States District Court Judge in Brownsville, Texas in a lawsuit brought by 26 states, issued a preliminary injunction which prevented USCIS from implementing the Deferred Action for Parents of American and Lawful Permanent Residents (DAPA), and the expanded Deferred Action for Childhood Arrivals (DACA) programs. The decision was made by the Judge using a rationale that USCIS had not gone through what the Judge considered to be appropriate *Federal Register* notice provisions for a what he felt was a significant regulatory change.

The administration initially stated that it would not request a stay by the Judge of the injunction pending the appeal, however under pressure from immigrant rights organizations, the administration did file a request for an emergency stay while it

appeals the decision, the granting of which would permit USCIS to accept applications while the appeal is pending. However, as has been reported, the Judge is not inclined to act expeditiously on a decision to lift the injunction. The actual appeal could take an estimate of up to 5 months for resolution in the Circuit Court which is nationally known as the most conservative in the country. Stay tuned.

The court order does not affect the extension of existing DACA applications or their renewal.

2) Limited H-4 Work Authorization Regulation Published

On February 24, 2015, USCIS published a Rule in the *Federal Register* which permits a limited number of H-4 spouses of H-1B nonimmigrants to obtain employment authorization. Currently the spouses and children of J-1, E-1, E-2, and L-1 visa holders enjoy work authorization. Because the United States has not been competitive among many other countries in providing work authorization to spouses of professional workers, USCIS was encouraged to propose a regulation on May 12, 2014 which would provide limited employment authorization. As to the Rule which is effective May 26, 2015, the spouse of an H-1B professional who is in H-4 status may file an I-765 application for employment authorization provided that: 1) The H-1B spouse is the beneficiary of an I-140, Immigrant petition for alien worker; or 2) The H-1B spouse has been granted a 7th or more year extension under AC21. Although a part of the President's November, 2014 Executive Action announcement, and with great ballyhoo by USCIS as a significant reform, the regulation is actually very limited and narrow. In effect, it will only provide work authorization to spouses of individuals from China, India, and the Philippines where the principal has established a priority date for a greencard, and if that priority date is backlogged for more than six years. After the President's speech on making the US more competitive in the global marketplace, the narrowness of this regulation is disappointing.

3) H-1B Season Has Arrived

It is now the time of year when many students in F-1 OPT status are totally stressed out about whether they will be successful in their quest for a change of status to H-1B. The filing date is April 1, and if the 65,000 plus 20,000 Masters or higher caps are reached in the first week, then the H-1B lottery wheel is spun. Last year there were approximately 172,500 H-1B submissions. This year is anyone's guess. But, the potential applicant must be warned that waiting until the last minute may be fatal, as the US Department of Labor must first certify the employer's Labor Condition Application-a process that could take two weeks. Time is getting close, but if the students and their employers act now, there is still time. Good luck to all.

4) Revised I-129 Form Available

The recently published I-129 Petition for Nonimmigrant Worker with a revision date of October 23, 2014 can now be downloaded from the USCIS forms website. Starting May 1, 2015, USCIS will only accept the revised form. The original cutoff date for the use of old forms had been scheduled to begin during the H-1B filing season, but was put forward to May 1 in order to avoid confusion.

5) How an Employer Can Document CAP Gap Employment

According to the minutes of a meeting between the AILA Verification and Documentation Liaison Committee, and the USCIS Verification Division and ICE Homeland Security Investigations on November 6, 2014, employers who must document work authorization on Form I-9 may now use a combination of documents including the OPT EAD and the I-797 receipt notice showing H-1B filing. This form of evidence is in addition to the prior use of the properly endorsed I-20 showing the cap gap protection. Unfortunately, USCIS announced that it would not be amending its documentation listed in USCIS M-274, which contains the list of I-9 acceptable documents.

6) Nebraska Service Center Teleconference on Students, School and Other Issues set for March 12.

The Nebraska Service Center has announced that it will hold a monthly Stakeholder Teleconference on Thursday, March 12, 2015 at 10:00am (Central) time. The teleconference will be reserved for issues relating to students and schools, and other issues. These issues will include the I-765 (c) (9), (a) (5) and (c) (8) entries, citizenship (N-400) and other forms. No RSVP is necessary and call in information will be provided during the week of March 9, 2015.

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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