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**MEMORANDUM**

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To: International Education Program Administrators

**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.**

- 1) SEVIS Guidance Confirms Volunteer Work is Permitted Under OPT
- 2) How to Deal with a "Deficient" RFE
- 3) Guidance on DACA Renewals
- 4) State Department Publishes "Final Rule" Removing NAFTA Petition Requirement for Mexican Citizens
- 5) USCIS Introduces Enhanced Online Customer Service Tool
- 6) DOS Releases Tourist (B) Visa Refusal Rate by Country for 2013
- 7) 500,000 U.S. Employers Have Signed Up for E-Verify

1) SEVIS Guidance Confirms Volunteer Work is Permitted Under OPT

Several months ago the Nebraska Service Center decided that it would deny OPT STEM extensions on the basis that applicants had worked as volunteers or unpaid interns during their initial OPT period. These denials were based on a misreading of employment definitions in Service regulations originating in IRCA in 1986. In 2010 SEVP provided policy Guidance at section 7.2.1(p17-18) which stated in part that:

*“Unpaid employment. A student may work as a volunteer or unpaid intern, where this practice does not violate any labor laws. The work must be at least 20 hours per week for a student on post-completion OPT. A student must be able to provide evidence acquired from the student’s employer to verify that the student worked at least 20 hours per week during the period of employment.”*

On February 6, 2014 SEVIS distributed Broadcast Message 1401-05 “Comment” which reiterated the 2010 policy for use by USCIS Service Centers. SEVP also noted that if the OPT STEM application was denied solely on the basis that the applicant worked as a volunteer or unpaid intern during their initial OPT period, the applicant should contact the Service Center that issued the denial by sending an email message to the applicable dedicated student mailbox. A copy of the Broadcast Message may be found on our website by clicking [here](#). It must be mentioned that NAFSA played a major role in bringing this problem to resolution.

Please note that there is a misstatement in the fourth paragraph of the broadcast message where it states: “...some OPT STEM extension applications were recently denied in error based on the fact that the student applicants intended to work as volunteers or unpaid interns during their extension period.” NAFSA is working with SEVP to clarify the underlined language.

2) How to Deal with a “Deficient” RFE

The notes of a liaison meeting between AILA and USCIS Service Center Operations in Washington D.C. held on January 29, 2014 noted that if a Request for Evidence from USCIS is received which appears to use incorrect legal standards, interpretations, or make an inappropriate demand, that a request for review could be sent to [SCOPSRFE@dhs.gov](mailto:SCOPSRFE@dhs.gov). However, it was noted that the applicant must respond to the RFE regardless of any email complaint. Another section of the meeting minutes noted that emails directed to Service Center addresses frequently receive no response. USCIS advised that it would take up this concern with the Service Centers.

3) Guidance on DACA Renewals

On February 19, 2014 USCIS distributed a Stakeholder Message advising that a notice has been posted on the USCIS website to the effect that individuals granted Deferred Action for Childhood Arrivals prior to August 15, 2012 or who have an employment authorization document which will expire within the next 120 days must apply for DACA renewal now, in order to avoid any lapse in employment authorization or unlawful presence in the United States (which, in any event, they probably have already maxed out). The guidance may be found [here](#). A DACA flyer from the U.S. Department of Justice, Civil Rights Division may be viewed [here](#).

4) State Department Publishes “Final Rule” Removing NAFTA Petition Requirement for Mexican Citizens

The “Federal Register” of February 10, 2014 carried a “Final rule” by the Department of State which removes the petition requirement for Mexican citizens applying for TN visas as a NAFSA professional. Unlike Canadians, who never required a TN petition on form I-129, nor a visa from an American consulate,

Mexican citizens seeking U.S. entry and TN status required a petition by a U.S. employer, as well as a visa issued by a U.S. Consulate to apply for entry into the U.S. in TN status at a port of entry. Similar to the Canadian entrant, the Mexican TN entrant can be admitted for a three year period even though the visa may only be valid for one year. The “Final rule” eliminates the petition requirement for Mexican TN applicants effective February 10, 2014. Mexican TN applicants (unlike Canadian TN applicants) are now only required to obtain a TN visa from a U.S. Consulate. The Mexican TN applicant will now complete the electronic non immigrant visa application (DS-160) and include a detailed employment letter. The Mexican citizen will pay a \$50.00 fee for the visa. A Canadian entrant will pay a \$50.00 at the port of entry. The “Federal Register” rule may be found [here](#).

5) USCIS Introduces Enhanced Online Customer Service Tool

On February 20, 2014 USCIS announced the introduction of an “Enhanced Online Customer Service Tool,” with a “more streamlined look and feel to e-Request,” the USCIS online customer service tool.

E-Request, permits individuals to submit requests to USCIS if:

1. A case has been pending longer than the posted processing times
2. The applicant did not receive a notice from USCIS, such as a biometrics appointment notice or an interview notice or,
3. There is a typographic error on a USCIS issued card.

The enhancement appears to be that beginning on February 15<sup>th</sup> requests for disability accommodations may also be made in the system. In addition, the online change of address tool is now able to print a copy of the completed AR-11 change of address form.

6) DOS Releases Tourist (“B”) Visa Refusal Rate by Country for 2013

The State Department has recently released its “adjusted refusal rate” for “B” Visas by Nationality for the 2013 fiscal year. The “B” visa, similar to the “F” visa

contains a requirement that the entrant have a residence in “a foreign country which he has no intention of abandoning.” As these two categories have this some requirement, the “B” refusal rate may be of interest in predicting “F” visa refusal rates for citizens of specific countries. For example, Afghanistan has a refusal rate of 62.7%, Bangladesh 43.5%, Dominican Republic 41.3%, Egypt 39.5%, Ghana 61.8%, Greece 26%, Hungary 31.6%, India 18.7%, Iran 48.2%, Jamaica 35.3%, Liberia 59%, Nigeria 35.1%, Norway 19.1%, Pakistan 38.5%, and Yemen 44%, among many others. If you would like a copy of the complete chart, we can email it to you.

7) 500,000 U.S. Employers Have Signed Up for E-Verify

USCIS recently announced that more than 500,000 employers are now registered to use the E-Verify program. E-Verify permits enrolled employers to confirm new employee eligibility for work. In 1996 there were only 11,474 enrolled companies. The question may be asked as to the cause of the substantial increase. There is no specific answer, but partial answers may rest in the fact that many states have passed their own e-verify laws, and federal contractors and sub-contractors may be required to use e-Verify. It is also possible that efforts by ICE to enforce employer sanctions may have played a role, as some companies have agreed to use e-Verify to conduct self audits as part of a settlement agreement for violations. It remains an issue that 500,000 is an awfully small number of employers for the entire US – especially if government coercion is factored into compliance.

At this time it is possible that any “Immigration Reform” legislation may carry a requirement for most employers to enroll in e-Verify. Perhaps, enforcement oriented Congressmen are more interested in controlling employment of illegal aliens, than they are of intrusive big government programs. Immigration politics are always interesting.

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