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**MEMORANDUM**

To: **International Education Program Administrators**

From the Desk of Eugene Goldstein:

Ever wonder why chaos reigns over our southern border. One reason may be CBP's personnel culture, and the duties officers are expected to perform. According to minutes of a liaison meeting between AILA with NY/NJ CBP on November 7, 2019, CBP noted that they have had significant turnover in the last two years. As a result, 50-60% of the NY workforce has two years or less experience on the job. According to the minutes:

The CBP leadership discussed how officers are staffed and trained. They indicated that there has been significant turnover in the last two years. Fifty to sixty percent of the workforce in New York has two years or less experience on the job.

New officers start their training with 2-4 weeks of administrative duties. They then spend 19 weeks at the academy. After returning from the academy, they spend 37-weeks in on the job training. During the 37 week period, they perform inspections under the supervision of a supervisor, who watches over 5 to 6 trainees at any given time.

Officers get to bid on where they want to work starting in September or October of each year. The bid process is based on seniority. Most officers work in passenger processing.

...

A U.S. Federal Appeals Court covering the Second Circuit (NYS) has upheld a District Court injunction which, on a nationwide basis, blocked the implementation of the administration's public charge restrictions on issuance of green cards. The rule was

challenged by the States of New York, Connecticut, and Vermont, as well as New York City, and several non-profits. Two other federal appellate courts have ruled for the government, thereby making an appeal to the U.S. Supreme Court a certainty. The title of the case is: *New York et.al v. US Department of Homeland Security et.al*, 2d Cir, appeal no. 19-3591. On January 27, the U.S. Supreme Court lifted the injunction (except in Illinois). The public charge requirement is now in effect as the case continues to be litigated. The regulations will affect nonimmigrants as well as immigrants.

...

The *New York Times* of January 1, 2020 carried a story: “Firings at Trump Property in Immigration Crackdown.” As has been widely reported, Trump properties whether hotels, golf courses, or others have hired undocumented individuals. According to the *Times*, for fear of these individuals coming forward, the organization is now cracking down and has pledged to use e-verify. What seemed to have sparked the article was that the Trump Winery in Virginia fired its’ undocumented workers on December 30, 2019, after the harvest was completed. According to the immigration lawyer representing the fired workers:

These workers have been there for many years.... Its’ sad to hear about their firing. But many of them have been able to move on and get better paying jobs. At first when you hear about them, you feel bad. But then you realize that maybe it wasn’t the best environment to work in.

It sounds like the owner was not only employing undocumented workers-but underpaying them as well. Who would have thought! Anyone want to take odds that ICE will retroactively enforce the law and fine the employer.

### Practical Stuff

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- 1) Travel Ban 4.0

On January 31, 2020, the Trump administration through Proclamation 9983 expanded the travel ban to six additional countries. These countries include Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan, and Tanzania. The effective date for the new ban is February 21, 2020. For the most part, the new expanded travel ban does not affect nonimmigrant visas issuance or admission for F-1 students, J-1 exchange visitor, or H-1B workers. For a fact sheet on the new ban, see [here](#).

- 2) Novel Coronavirus Chinese Suspension Proclamation

On January 31, 2020, the Trump administration suspended entry to the U.S. of all aliens including F-1 students, J-1 exchange visitors, all nonimmigrants, and immigrants who were physically present within China (excluding SAR Hong Kong and Macau) during the 14-day period preceding their entry or attempted entry into the U.S. The Coronavirus travel ban was effective on February 2, 2020. Exceptions are provided for lawful permanent resident of the U.S. and other categories of nonimmigrants and immigrants. For a full list of the exceptions and details on the proclamation, see [here](#). For those falling under the exceptions, appropriate medical screening and possible quarantine measures must be taken before the traveler could enter the U.S. Additionally, DHS has designated all flights carrying persons who have recently traveled from, or were otherwise present within, China only to land at designed U.S. airports. For a list of those airports, see [here](#).

On February 10, 2020, the U.S. Mission in China has temporarily suspended regular visa services at the U.S. Embassy in Beijing and the U.S. Consulates General in Chengdu, Guangzhou, Shanghai and Shenyang. As stated the U.S. Mission in China’s [website](#): “Due to ongoing situation relating to the novel coronavirus, the U.S. Embassy and Consulates have very limited staffing and may be unable to respond to requests regarding regular visa services.” Although the website notes that some limited emergency appointments may be available, regular visa services will probably be suspended indefinitely until the situation in China stabilizes.

Relating to the Novel Coronavirus travel suspension, SEVP issued a [broadcast message on January 29, 2020](#) before the January 31, 2020 Proclamation. The broadcast message discusses steps to take for your international students who are

current outside of the United States or are exhibiting symptoms of the Novel Coronavirus.

3) Update on Unlawful Presence Litigation

On February 6, 2019, the United States District Court for the Middle District of North Carolina issued a permanent nationwide injunction against the August 9, 2018 USCIS Policy Memo for “Accrual of Unlawful Presence and F, J, and M Nonimmigrants”. The court ruled against USDHS/USCIS on both the Administrative Procedures Act rulemaking violation and the interpretation of INA 212(a)(9). This is a great win for schools and students after the May 3, 2019 preliminary injunction.

4) Public Charge Inadmissibility Final Rule Implementation on February 24

On January 27, 2020, the U.S. Supreme Court lifted the injunction for the [Public Charge Inadmissibility Final Rule](#) that was preliminarily enjoined from enforcement on its previous effective date of October 15, 2019, while the lower courts continues its proceedings except for the State of Illinois where the preliminary injunction is still in place. Forms that are affected by this [public charge rule](#) include I-129, I-485/SupA/485J, I-539/539A, I-601, I-864/864A/864EA, and I-912. The new revised forms must be used on and after February 24, 2020. For more information about the factors used in the determination of public charge inadmissibility, please check out DHS’s website [here](#).

5) SEVP Broadcast Message:  
Exemptions from Direct Issuance of I-20

On January 7, 2020 SEVP issued “Broadcast Message” 2001-01. The “Broadcast Message” permits narrow exceptions to the requirement that DSOs may only issue I-20s directly to the applicant. Provided US courier services do not operate in the applicant’s country, or the student is in an area with inadequate infrastructure which makes delivery difficult or unsecured, the DSO, with prior consent from SEVP, may issue the I-20 to a designated individual. The Message may be found [here](#)

6) USCIS Issues OPT Statistics

USCIS recently responded to an inquiry regarding OPT by the Senate Homeland Security and Government Affairs Permanent Subcommittee on Investigations. The USCIS [response](#) showed a 2019 total of OPT requests of 215,264 with an average processing time of 94 days, and a 97% STEM approval rate. (Non STEM approval rates were not listed.) The report lists statistics from 2015 through 2019.

7) H-1B Registration Process to Begin on March 1

The *Federal Register* of January 9, 2020 carried a “USCIS Notice of Implementation of H-1B Registration Process for FY2021”. The “Notice”, which may be found [here](#), says that all cap-subject H-1B petitions must be electronically registered between March 1<sup>st</sup> until closing on March 20<sup>th</sup>, 2020. The selection will then be made and petitions will be accepted. The registration process will be posted (on an unspecified date) at USCIS.gov. Employers and their representatives are allowed to set up their required registration account prior to March 1, and file for multiple individuals in one registration. Multiple filings for one individual will disqualify all registrations. Will large employers flood the process? We will see.

While USCIS has clarified that advanced degrees need not be earned prior to registration, they do need to be earned prior to filing the actual petition.

8) TPS for Yemen Extended Through September 2, 2021

On January 3, 2020 USCIS announced on its’ website that the TPS designation for Yemen has been extended for eighteen months to September 3, 2021. It is noted that TPS was extended, but not redesignated which means that no new applicants may apply, but that the approximately 1,250 Yemenis presently in TPS may extend. Among all its misfortunes, Yemen has been fortunate not to be located on the U.S. southern border.

9) CBP Enhances Screening for Iranians

On January 10, CBP posted a [Release](#) specifically referring to Iranian entrants stating that:

...CBP has understood Iran and its proxies to be a very capable adversary for some time...

... As part of a multi-layered approach to security, CBP officers may refer for additional screening individuals who present a known risk or individuals about whom we need more information to make a determination of risk. These referrals are based on factors that could include the individual’s activities, associations and travel patterns.

CBP has subsequently denied any policy specifically focusing on Iranian entrants.

In effect, all Iranians whether U.S. citizens, lawful permanent residents, or nonimmigrants are subject to enhanced scrutiny upon arrival at U.S. POEs. They should be prepared for lengthy, intrusive, and as has been reported, discourteous inspections.

On January 14, *The Guardian* carried a story “Treated like a Terrorist”: US deports growing number of Iranian students with valid visas from US airports”. The article noted:

Last year, the Guardian reported US authorities were increasingly stopping Iranian students from boarding US-bound flights without informing them their visas had been cancelled prior to travel. In recent months, however, a growing number of Iranians with valid student visas have been detained upon arrival at US airports by Customs and Border Protection and deported back to Iran. Some of them have been barred from returning to the United States for years.

On January 22 the *New York Times* carried a story: “Student from Iran Kept from Entering U.S., Despite Valid Visa and a Court Order”. Apparently, CBP has been somewhat active.

On January 27, *The New York Times* led its’ National Section with a story: “Amid Tensions, US Turns Away Iranian Students”. The story featured students who were turned away in Atlanta, Chicago, Boston, and Los Angeles, after a long and extensively vetted visa was second guessed by CBP officers.

It is unknown whether CBP actions are by uncontrolled and overzealous personnel or are policy. It is also unknown which airports are the most affected. Hopefully time will calm things down, as hopefully, will oversight.

#### 10) DS-160 Filing Hints

As part of the liaison minutes of an AILA/DOS Visa Office meeting on October 3, 2019 certain suggestions were made by DOS for DS-160 filings.

It is best to file and have the interview at the same consular post to avoid the inefficiencies of moving an application. A new form must be filed if there is a “material” change such as name, passport number, or nationality. An address change may not be “material”. A non-material change will not require a new form, as the change can be entered in the notes section by the consular officer.

It was also noted that Internet Explorer, or Chrome, but not Safari, are compatible with the application.

Further, should the applicant choose to file a second application, and obtain a new bar code, both applications should be brought to the interview.

As to social media accounts DOS noted:

...consular officers do not use social media information to screen visa applicants for political content of social media posts unless there is content that suggests a threat to national security or public safety. State did not discount the possibility, however, that social media data may be used for other purposes, particularly where there are fraud indicators in a visa application.

11) Birth Tourism is not a Valid Purpose for “B” Visas

On January 23, DOS posted a “Final rule” for public inspection which would create a presumption that any woman who is pregnant and is seeking a tourist visa is doing so for the purpose of giving birth in the U.S., thereby making the child a U.S. citizen. The presumption may be overcome by evidence of need for treatment of a complicated pregnancy which cannot be treated locally, ability to pay costs, and contacts with treating U.S. physicians or hospitals. Although it is not the purpose of this Memo to discuss issues of this nature (which were well covered by the *New York Times* on January 24, “Trump Targets ‘Birth Tourism’ by Restructuring Visas for Pregnant Women”), it should be pointed out that DOS has specified that this new regulation is not applicable to Visa Waiver entrants, and most important to our constituents, it does not apply to F-1 or F-2 students, or to any category other than B nonimmigrant.

12) SEVIS by The Numbers Report Released

The latest *SEVIS by the Numbers* Report has recently been released. It is subtitled “Annual report on nonimmigrant student trends”. There was no prior notice that the publication would be issued annually, or that it would continue to be issued at all. It is 22 pages and loaded with lots of statistics. It may be found [here](#).

*Please let us know if you have any questions, or if you would like copies of any of the materials covered.*

*Note (After all, we are lawyers!): 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.*