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MEMORANDUM

To: International Education Program Administrators

Congratulations to our own Lucy G. Cheung who was recently quoted in two separate articles in major publications about CBP turning back F-1 students. Please see the attached links.
<https://www.insidehighered.com/news/2019/09/04/palestinian-student-denied-entry-us-gains-admission-harvard> and
<https://www.teenvogue.com/story/trump-policies-international-students-visas>

From the Desk of Eugene Goldstein:

August and September have proven that there may be no limit to the petty and mean-spirited xenophobia from the King of Mean and his court of "Acting" Inquisitors. Much has been written about the ending of "deferred action" for medically critical individuals, and of the program's unwanted transfer without notice by USCIS to ICE for the latter's use of its' magnanimous discretion. This change, which though very critical for those it would affect, would not have affected a large number of people. On September 5, litigation was started in the U.S. District Court for Massachusetts asking the court to declare transfer of the deferred action program to be unlawful, and enjoining its' enforcement.

After a letter signed by 120 members of Congress and a hearing by the House Oversight Committee for the Department of Homeland Security by Representative Ayanna Pressley (D., Mass.) Acting Secretary McAleenan announced that consideration of "deferred action" for individuals with life threatening medical conditions would resume. USCIS confirmed the instruction. It would seem that Mr. McAleenan reversed Acting USCIS Director Kenneth T. Cuccinelli, and that ICE didn't want the program. It has been reported, though without official confirmation, that the program is being continued and that reinstatements are taking place.

The change in the definition of citizenship to exclude a small number of children of active members of the military is another USCIS action which, though it will affect few children, is quite a way to say: "Thank you for your service". Though highly criticized, this change has not been revoked.

The Acting Commissioner of USCIS, Kenneth T. Cuccinelli was profiled in the *New York Times* on September 6. The *Times'* profile contained the following about Mr. Cuccinelli's plans for SEVIS:

Mr. Cucinelli has emailed Mr. Albence, the acting director of ICE, and other officials at the agency to demand that it turn over authority over a student visa program, which Mr. Cucinelli wants to limit in scope, according to administration officials. Mr. Albence pushed back against the combative emails, the officials said, and Mr. McAleennan [Acting HHS Secretary] and some White House officials have told Mr. Cucinelli to tone it down.

“That’s not how it’s going to work my friend,” Mr. Cuccinelli said in a reply to the pushback from ICE officials, according to an administration official.

It would seem that Mr. Cuccinelli’s actions may be too petty and nasty, even for the “acting” ringmasters of the Trump circus.

Not to be forgotten are the children separated from parents seeking asylum. The Inspector General of the Department of Health and Human Services released a report on September 4 entitled “Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody”. In short, HHS doesn’t have the facilities to treat children who come into their system already traumatized. The Report may be found [here](#).

A complaint was filed by AILA, and Catholic Legal Immigration Network (CLINIC) on September 5, to the Department of Homeland Security’s Office of Civil Rights and Civil Liberties, the DHS Office of the Inspector General, and the FBI emphasizing the systematic failure to provide adequate medical care to children in CBP custody.

It also needs to be noted that all of the agencies dealing with immigration are led by “acting Directors” without full managerial authority. These “actings” can’t appoint leadership within their agencies, and thus only acting leadership may be appointed, thereby hollowing out management throughout the bureaucracy,

Practical Stuff:

- 1) New USCIS Forms Based on the Public Charge Final Rule
- 2) New SEVP Policy Guidance on Practical Training
- 3) DHS Proposes Registration Fee for H-1B Cap-Subject Petitions
- 4) STEM OPT Worksites Being Inspected by ICE
- 5) DHS Posts Visa Requirements for Bahamians
- 6) Administrations’ New Unpublished H-1B Restrictions Revealed
- 7) Recent DACA Statistics
- 8) TPS

- a) El Salvador TPS Work Permits Expiring on September 9, Will Remain Valid Through January 2.
- b) Syria TPS Extended

PRACTICAL STUFF

1) New USCIS Forms Based on the Public Charge Final Rule

With the DHS's [Final Rule on the Public Charge Ground of Inadmissibility](#) going into effect on October 15, 2019, USCIS will not accept current editions of Forms I-485, I-129, I-539, I-864, and I-864EZ if they are postmarked on or after October 15, 2019. It is imperative to advise your students to use the correct edition version when requesting a change of status after October 15th. It is interesting to note that several law suits have already been filed against the final rule. We will see how this will play out in court.

2) New SEVP Policy Guidance on Practical Training

On September 27, 2019, SEVP published a Policy Guidance on Practical Training on Determining a Direct Relationship Between Employment and a Student's Major Area of Study. While the new Policy Guidance provides some useful information in the form of simple examples, the scenarios and explanations do not provide a complete picture of what a DSO's responsibility is for initial OPT employment review. Both practical and technical issues remain. For example, to what extent is a DSO responsible for this subjective determination as an international Student Advisor rather than an Academic Advisor, how long is a DSO required to keep these materials, and how does the SEVP Portal factor into all of this. These are just some of the concerns we hear from the field. Perhaps raising these practical concerns regarding this Policy Guidance with your Field Rep would be helpful....

3) DHS Proposes Registration Fee for H-1B Cap-Subject Petitions

On September 4, the *Federal Register* carried a "Notice of proposed rulemaking" which would require H-1B cap -subject petitioners to pay a \$10.00 fee for each registration submitted to USCIS. Comments must be submitted by October 4. The proposed fee is being justified by, among other reasons, the vast saving to petitioners from not needing to prepare petitions for registrants who are not selected. Considering that the entire registration system is unproven, perhaps a fee is premature. In any event, why wasn't it in the original registration rulemaking process? The "Proposed rule" may be found [here](#).

4) STEM OPT Worksites Being Inspected by ICE

A recent posting by AILA advises that ICE has recently begun to conduct on-site inspections for STEM OPT employment. Salary determinations and supervision

structure for training among other requirements may be found on the Study in the States Website <https://studyinthestates.dhs.gov/> .

It has been reported that site visits are random and may take in the range of 1-2 hours, and are performed by SEVP officers. Advisors, students, and employers are reminded to update Form I-983 and to review the form and its' instructions.

5) DHS Posts Visa Requirements for Bahamians

On September 9, the Department of Homeland Security posted a Release advising that the normal requirements that arriving aliens must have a valid passport and visa still apply. However, it does provide an exception for certain Bahamians who satisfy specific requirements and are applying for admission without a visa at one of the CBP Preclearance facilities located in Nassau or Freeport International Airports.

The Release with complete requirements may be found [here](#). Apparently, no consideration for hurricane issues is being considered.

6) Administration's New Unpublished H-1B Restrictions Revealed

A recent release of USCIS documents under the Freedom of Information Act (FOIA) has revealed that denial rates for H-1B petitions rose from 6% in FY2015 to 32% in the last quarter of 2019.

The RFE rate was 60% in the first quarter of FY2019. The newly disclosed USCIS instructions are dated March and July 2017. It also appears that legal citations for the most controversial changes are lacking. Questioning an RFE's lack of statutory authority for a request is not considered. The choice is comply or get denied, even if the substance of the request is legally unsupported. In fact, denials for IT occupations may exceed 50%. Prior denial rates for FY15 were around 4%. Lawyers have seen these issues happening for some time. It has now been confirmed.

7) Recent DACA Statistics

USCIS recently published June 30 statistics for current DACA beneficiaries showing a total of 660,880 plus 35,680 pending renewals. The statistics are broken down by country of origin and by location by state.

The administration might be interested in the latest TRAC statistics noting that the Immigration Court's active backlog is 1,007,155 plus an additional inactive 322,535 cases. If the administration is still interested in removing DACA applicants, it may want to review its' existing backlog. Then again, there's TPS beneficiaries from Haiti, El Salvador, Honduras, and Nicaragua. All of these people would be added to the backlog.

8) TPS

- a) El Salvador TPS Work Permits Expiring on September 9, Will Remain Valid Through January 2.

On September 9, the Justice Department posted that TPS for El Salvadoran work permits in codes A-12 and C-19 will automatically be extended to January 2. For more information see the USCIS website under El Salvador TPS.

b) Syria TPS Extended

The *Federal Register* of September 23, carried a “Notice” that TPS for Syria has been extended for an additional 18 months from October 1, 2019 through March 31, 2021. Reregistration is open for 60 days from September 23, 2019 through November 22, 2019. EADs are automatically extended to March 28, 2020. There are approximately 7,000 current Syrian TPS beneficiaries. The *Federal Register* “Notice” may be found [here](#). The USCIS posting may be found [here](#).

It is unknown if TPS will be granted to Venezuelans in the U.S. The decision will probably relate to Presential election polls in Florida.

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.