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MEMORANDUM

To: **International Education Program Administrators**

August has seen even fewer publicly announced activity from USCIS, CBP and ICE than usual, at least about actions affecting international education. USCIS, CBP, and ICE have effectively ceased communications with the public.

Delays continue to mount with changes of status publicly announced at up to 6.5 months with H-1Bs taking up to 8.5 months, 13.5 months for extensions, and OPT lags at 5 months. USCIS claims to be taking steps to fix the problem with new hires, redistributing workload, adding overtime, and technological solutions. Nothing has been mentioned about lowering RFE rates or ending re-adjudication of H-1B extensions.

Check out "Scholars Face 'Discourage, Delay, Deny' Visa Fights" in the *New York Times* on August 29.

Serious and meaningful fixes may need to wait for the results of the November 2020 election.

- 1) Court Actions
 - a) Funding Reallocation
 - b) Two District Courts Uphold Challenges to Asylum "Turnback Policy"
- 2) USCIS Releases Report "F-1 Students Obtaining Another Nonimmigrant Classification"
- 3) TPS Extended for Syria
- 4) New "Public Charge" Rule
- 5) H-1B Developments
 - a) All H-1B "Unselected" Petitions Returned
 - b) Will USCIS Require an Untested Registration Process?
 - c) New Direct Filing Addresses on September 1
- 6) Fraud Indictment for Supplying Phony F-1 STEM OPT Documents

1) Court Actions

a) Funding Reallocation

On July 26 in *Trump, et al, v. Sierra Club, et al*, the Supreme Court stayed the District Court's order that had enjoined the administration's diversion of military funds to build the southern border wall. This was a victory for the Trump administration as it allows them to use military funds to build their wall even as the case - which is being litigated in the Ninth Circuit - is awaiting disposition on appeal.

b) Two District Courts Uphold Challenges to Asylum "Turnback Policy"

On July 29 the U.S. District Court for the Southern District of California rejected the administration's effort to dismiss a challenge to its' "Turnback Policy" which requires asylum seekers to present themselves at ports of entry along the southern border in order to make an asylum claim. *Al Otro Lado, Inc. v. Mc Aleenan*.

On August 2, the US District Court for the District of Columbia vacated the "Interim final rule" which created the "Turnback Policy", *O.A., et al v. Trump, et al*.

This was a blow to the Trump administration and their attempt to make it more difficult for individuals to seek asylum.

2) USCIS Releases Report "F-1 Students Obtaining Another Nonimmigrant Classification"

In late August AILA posted the above titled USCIS Report dated July 2019. The Report covers statistics from F/Y 2008 to F/Y 2018 and shows that 84% of those F-1 students who sought a change of status were to H-1B, 6% were "other", and 10% were to non-employment based categories. Half of the 10% were to H-4 and one quarter were to F-2.

It is interesting to note the selective nature of these statistics. At no point does the Report acknowledge how many international students depart the U.S. during, or upon completion of their programs. It remains to be seen how this 'data' will be used by the administration in the future.

The complete Report may be found [here](#).

3) TPS Syria

On August 1, DHS announced the extension of TPS for Syria for an additional 18 months through March 31, 2021. The decision affects approximately 7,000 Syrians now in the U.S. since August, 2016, and continuously physically present since October 1, 2016.

4) New “Public Charge” Rule

On August 12, USCIS announced that its’ long awaited new, restrictive public charge requirements would be in the *Federal Register* on August 14, which is scheduled to go into effect in 60 days. These requirements will affect immigrants and nonimmigrants who have received means tested (income-based) public benefits, and will generate new forms as bricks to build the administration’s paper wall. Receipt of one years’ worth of benefits within a 36-month period starting on the date of the registration will make the applicant ineligible for a green card. Benefits from multiple programs will multiply the number of months i.e. 3 programs over 4 months will make the applicant ineligible for a green card. Essentially, USCIS has developed a new Totality of Circumstances balancing test which would look at variables such as age, health, family status, assets, financial resources, educations, skills, as well as affidavit of support.

In practice, few individuals are likely to be affected. This is especially true for international students and scholars, who are expected to demonstrate their financial resources before receiving their visas at the consulate abroad.

The new Rule effectively lowers the standard of what USCIS considers a ‘public charge’, expands the programs included in the public charge test, and shifts the focus from a sponsor’s financial affidavit of support to the applicant’s income and future prospects.

The expanded list of programs is now:

- SSI;
- TANF;
- State/Local cash benefit programs for income maintenance;
- SNAP;
- Housing vouchers & project-based rental assistance (Section 8);
- Public housing (Section 9); and
- Non-emergency Medicaid (exceptions apply).

It is important to note that the final four items are the newly expanded programs. Use of these newly added programs up until the Rule’s effective date (October 15, 2019) cannot be used against the green card applicant’s green card application.

It is also important to note that Medicaid for children, and pregnant women will not be used in the new public charge means-base test and will not be used against the green card applicant’s application. Additionally, state and local benefits that are not for income maintenance such as Essential Plan, State-funded Medicaid are exempt.

While of course this is not a positive Rule by any means, in reality, it will serve more as a scare tactic and administrative burden, for the most part.

For those interested, *The New York Times* carried a front-page lead column story on August 13, and an excellent analysis on August 15.

It is also possible that this Rule will never see the light of day, as litigation has been filed in multiple jurisdictions by states, counties and NPOs, including the states of New York, Connecticut and Vermont.

5) H-1B Developments

a) All H-1B “Unselected” Petitions Returned

On August 15 USCIS announced that it had returned all “unselected” FY2020 H-1B cap-subject petitions which were not selected by the May 17 selection completion date. The announcement may be found [here](#).

b) Will USCIS Require an Untested Registration Tool?

There have been serious concerns by business, lobbying and professional organizations that USCIS will start H-1B Cap Season on April 1 with an untested registration tool. Apparently, USCIS has done little outreach to prospective users (no longer “customers”) of the new process. There is significant concern that “technical glitches and operational disruptions” could occur which would disrupt the use of the H-1B “tool”. Considering USCIS’ history of electronic issues, it might be wise for them to reach out for input. All institutions using the H-1B process should remind USCIS of its’ responsibilities.

c) New Direct Filing Addresses on September 1

On August 30, USIS posted a Notice that there will be new direct filing addresses for non-exempt H-1Bs, mostly for other than new filings. The Notice may be found [here](#).

6) Fraud Indictment for Supplying Phony F-1 STEM OPT Documents

On July 26, *Bloomberg News* carried a story about the arrest in Chicago of Weiyun (Kelly) Huang for providing fraudulent documents such as job offer letters, payroll records and tax forms to support STEM OPT extensions. According to the story, she provided documents to more than 2,600 students and was paid about \$2 million. She had advertised in China using the “Chinese Looking for Job” website and the “Job Hunters of North America We Chat” messaging platform. Some students were from an unidentified school in Chicago. No students were charged. Hopefully, she will be allowed to keep enough money to buy many years worth of supplies at the prison commissary.

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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