

GOLDSTEIN AND CHEUNG, LLP
80 Maiden Lane, Suite 1008
New York, NY 10038
212-374-1544
Fax 212-374-1435
eglaw@aol.com
contact@gcimmigrationlaw.com
<http://www.gcimmigrationlaw.com>

Eugene Goldstein
Lucy G. Cheung
Michael J. Goldstein

December 2, 2019

MEMORANDUM

To: **International Education Program Administrators**

From the Desk of Eugene Goldstein:

Once upon a time these Memos were full of practical information released by a healthily operating government administration which had the maturity to understand how the sharing of policy information benefitted both the agency and its' constituents. Unfortunately, in a time of hollowed out bureaucracy and the top down instillation of fear into government operations, this state of operations is no longer the case. The various government agencies dealing with immigration have, for the most part, ended their liaison efforts. The agencies have circled the wagon train. Whether this is because little new positive policy is being made because of all the "Acting" positions, or because of fear of public criticism due to restrictive policies, is an open issue.

According to NAFSA and IIE statistics there has been a significant decrease in international student applications over the last three years. Although the United States has a tradition of seeking out the best brains, the hollowing out of the "deep state" has left us with a shallow state. Hopefully, there will be more substantial positive developments to write about in the future.

On November 5, 2019 *Forbes* carried an article "All the President's Immigration Lawsuits", <https://www.forbes.com/sites/stuartanderson/2019/11/05/all-the-presidents-immigration-lawsuits/#28f5f3df7d8e>, a comprehensive summary of litigation fighting against administration immigration policies including: public charge, TPS, asylum and detention policy, H-1B visas, the wall, refugee policies, and state and local enforcement.

On November 12, DACA was argued before the Supreme Court. Assumedly, there will be some decision by or before May, 2020.

Most recently, in *Doe v Trump* in the U.S. District Court in Portland, Oregon a temporary restraining order was obtained against the latest restrictionist efforts of requiring new immigrants to actually have, or have the future ability to purchase health insurance.

Meanwhile, TRAC Immigration released a report “Incomplete and Garbled Immigration Court Data Suggest Lack of Commitment to Accuracy.” The Immigration Court System is under the Department of Justice. The report may be found at:

<https://trac.syr.edu/immigration/reports/580/>

And, perhaps, underpinning much of the chaos in immigration is Presidential Assistant Stephen Miller, who recently has had a lot of media attention because of the release of a trove of emails he wrote as an aide to former Senator Jeff Sessions. Mr. Miller’s far right xenophobia was detailed in articles in *The New York Times* (among others) on November 14, 15 and particularly on the front page on November 19, as well as in an op-ed by Michelle Goldberg. Every mother may want their child to be unique, but having America’s only Jewish white nationalist may not be what she expected.

Practical Stuff

- 1) The Future for SEVP?
- 2) SEVP to Require Form I-983 When Recommending STEM OPT
- 3) Temporary Protected Status Continued for El Salvador, Haiti, Honduras, Nepal, Nicaragua and Sudan
- 4) Poland Designated for Visa Waiver Program
- 5) Form I-612 has New Edition
- 6) \$10.00 Fee Finalized for H-1B Registration
- 7) USCIS Proposes Fee Increases

- 1) The Future for SEVIS?

On November 21, the Department of Homeland Security, (among others) published its’ “Agency Rule List-Fall 2019”. This list contains Pre-Rule, Proposed Rule, and Final Rule status of the agency’s regulatory plans. Among many other DHS programs, ICE listed some future items of concern for SEVP. The full Agency Rule lists may be found [here](#), with relating individual citations.

Three SEVP citations:

- 1653-AA71 “Eligibility Checks of Nominated and Current Designated School Officials of Schools that Enroll F and M Nonimmigrant Students and Exchange Visitor Program-Designated Sponsors of J Nonimmigrants”.

The agency wants to prevent criminal activities or threats from DSOs and ROs, and to provide enforcement and accountability mechanisms. Perhaps, when the actual proposal is released, it will contain real statistics demonstrating criminal activity by DSOs and their actual threats to the system.

A Proposed rule is scheduled for June, 2020.

- 1653AA76 Practical Training Reform. This rule is proposed for August, 2020. The “Abstract” for the proposal states in its’ entirety: “ICE will amend existing regulations and revise the practical training options available to nonimmigrant students on F and M visas.”

- 1653-AA78 “Establishing a Minimum Period of Authorized Stay for Students, Exchange Visitors and Media Representatives”. This proposed rule is scheduled for February, 2020. The “Statement of Need” for the change states: “The failure to provide certain categories of nonimmigrants with specific dates for their authorized periods of stay can cause confusion over how long they may lawfully remain in the United States and has complicated the efforts to reduce overstay rates for nonimmigrant students. The clarity created by date-certain admissions will help reduce the overstay rate.”

Some of you may recall that the concept of “Duration of Status” was introduced some years after the 1990 Immigration Act to simplify administration of the highly complex factors underlying when an F or J holder could go out of status. In fact, the use of D/S status was one of the justifications for the SEVIS electronic program. It also shifted much regulatory enforcement responsibility onto the then Foreign Student Advisor, who became the DSO/RO. Why an overwhelmed system wants to take back all of this adjudication responsibility is an interesting question. All that it may accomplish is more work for the DSO/RO, and a “lawyers full employment act”.

2) SEVP to Require Form I-983 When Recommending STEM OPT

Effective November 17 SEVP has mandated that DSOs “...will have to upload Form I-983 training plans in SEVIS when recommending initial STEM OPT, adding a STEM employer and at the 12- and 24-month self-evaluation reporting periods.” Attention is directed to links at SEVIS Release 6.49 Planning Guide, as well a November 8 pre-release webinar.

3) Temporary Protected Status Continued for El Salvador, Haiti, Honduras, Nepal, Nicaragua and Sudan

The *Federal Register* of November 4, carried a “Notice” entitled “Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua and Sudan”. TPS was not recertified, but merely continued because of continuing litigation. El Salvador, Haiti, Honduras Sudan and Nepal were all recertified until January 4, 2021.

Earlier termination dates may be effective if the government wins the respective litigation. See the announcement “DHS Extends TPS Documentation for Six Countries” [here](#).

4) Poland Designated for Visa Waiver Program

According to the *Federal Register* of November 8, a “Final rule; technical amendment” found [here](#), and the DHS posting “Acting Secretary McAleenan Announces Designation of Poland into the Visa Waiver Program” found [here](#), starting November 11, Polish citizens will now be able to apply for ESTA.

5) Form I-612 has New Edition

For those working with J-1 exchange visitors, please note that Form I-612 “Application for Waiver of Foreign Residence Requirement” has just been updated. Beginning on December 23, only the 09/17/2019 edition will be accepted. The former edition was dated 04/24/2017.

6) \$10.00 Fee Finalized for H-1B Registration

On November 7, 2019 USCIS posted “USCIS Implements \$10.00 fee of H-1B Visa Registration” found [here](#).

Whether the electronic registration program will be ready for the 2021 H-1B season has been subject to conjecture. According to the November 7 posting:

USCIS is slated to implement the registration process for the fiscal year 2021 H-1B cap selection process, pending completed testing of the system. The agency will announce the implementation timeframe and initial registration period in the *Federal Register* once a formal decision has been made, and USCIS will offer ample notice to the public in advance of implementing the registration requirement.

7) USCIS Proposes Fee Increase

The *Federal Register* of November 14, 2019 carried a “Proposed” regulation adjusting the USCIS fee schedule.

I-765 from \$410.00 to \$490.00
I-129H from \$460.00 to \$560.00
I-129O from \$460.00 to \$715.00
I-129TN from \$460.00 to \$705.00
I-539 from \$370.00 to \$400.00
I-612 \$930.00 reduced to \$525.00

The proposal provided a thirty-day period for response to December 16 instead of the usual 60 days. Apparently, the fee increase is needed, without any assurance of an improvement in deteriorated processing times and adjudications quality, and no justification for a \$200 million dollar transfer from the applicant fee account to ICE, as well as staffing transfers to ICE and CBP.

It was also noted that the premium processing will cover a new period of 15 business days instead of 15 calendar days. The November 14 *Federal Register* proposal may be found [here](#). A comprehensive summary by CLINIC may be found at <https://cliniclegal.org/fee-schedule-changes>

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.