

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

March 1, 2019

MEMORANDUM

To: **International Education Program Administrators**

- 1) In Search of the Elusive USCIS Decision (If you really want to know what it is?)
- 2) USCIS Introduces New Version of Form I-539 (and New Form I-539A) on March 11, 2018
- 3) USCIS Resumes Premium Processing for all H-1B Petitions Filed on or After December 21, 2018
- 4) Visa Suspension in Caracas
- 5) H-4 Visa Employment Authorization Termination Regulation goes to OMB
- 6) USCIS Announces "New Online Tools Reduce Wait Time for Callers"-or does it?
- 7) U.S. Diplomatic Posts in China Change Locations for H and L Nonimmigrant Visa Processing
- 8) ICE Announces Arrests in New York City, Long Island, and the Hudson Valley
- 9) University of Farmington-Continued

1) In Search of the Elusive USCIS Decision (If you Want to Know What it is?)

On January 30, AILA published a fourteen page (including three pages of footnotes) “Policy Brief, USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration”. Major points raised are:

The overall average case processing time surged by 46 percent over the past two fiscal years and 91 percent since FY 2014.

- USCIS processed 94 percent of its form types—from green cards for family members to visas for human trafficking victims to petitions for immigrant workers—more slowly in FY 2018 than in FY 2014.
- Case processing times increased substantially in FY 2018 even as case receipt volume appeared to markedly decrease.

Other agency data lays bare a USCIS “net backlog” exceeding 2.3 million delayed cases at the end of FY 2017. This total amounts to more than a 100 percent increase over the span of one year despite only a four percent rise in case receipts during that period.

The complete Policy Brief can be found [here](#) or at AILA.org. Search for AILA Doc. No 19012834 . The Brief was released to the press. A.P. (among others) covered it at: <https://www.apnews.com/ade23448964b4a7da1fae6538e331e43>.

These delays are sufficiently serious that on February 12, 86 members of Congress wrote to USCIS Director Cissna showing their grave concern, and requesting answers to seven very specific questions on policy and procedures.

AILA has also noted that NBC processing times for I-765 applications are taking 6.5 to 8.5 months. AILA members report actual times ranging from 6-12 months.

2) USCIS Introduces Version of Form I-539 (and New Form I-539A) on March 11, 2018

On February 11, USCIS announced that it is publishing a revised Form I-539 and a new Form I-539A. These forms will be required starting March 11, 2019. The new Form I-539A replaces the old supplemental information part of the former I-539. USCIS noted the following “significant changes”:

Every co-applicant included on the primary applicant's Form I-539 must submit and sign a separate Form I-539A, which will be available on the Form I-539 webpage on March 11. Parents or guardians may sign on behalf of children under 14 or any co-applicant who is not mentally competent to sign.

Every applicant and co-applicant must pay an \$85 biometric services fee, except certain A, G, and NATO nonimmigrants as noted in the new Form I-539 Instructions to be published on March 11.

Every applicant and co-applicant will receive a biometric services appointment notice, regardless of age, containing their individual receipt number. The biometric services appointments will be scheduled at the Application Support Center (ASC) closest to the primary applicant's address. Co-applicants who wish to be scheduled at a different ASC location should file a separate Form I-539.

The announcement may be found [here](#).

It is noted that unlike many prior changes in forms, there is no grace period. No explanation for this omission was provided. It is also noted that the form is used for all changes of status, including to and from F-1 and J-1, as well as for reinstatements. The new form, and the \$85.00 biometrics fee and appointment will apply to all uses of the form. No explanation was provided why biometrics are being required for those under 14, including infants.

On February 25, USCIS announced that a "National Public Engagement" regarding these new forms would be held on March 1, 2019 from 1pm to 2pm EST. The announcement with contact information may be found [here](#).

3) [USCIS Resumes Premium Processing for all H-1B Petitions Filed on or After December 21, 2018](#)

In last month's Memo we reported that USCIS has resumed Premium Processing for H-1B cap subject petitions (Memo Item 2 (c)). On February 15, USCIS announced that it is resuming premium processing for all H-1B petitions filed on or before December 21, 2018. The USCIS announcement may be found [here](#).

4) [Visa Suspension in Caracas](#)

In item 5 of last month's Memo we noted the suspension of both immigrant and nonimmigrant visa services at the U.S. Consulate in Caracas, Venezuela. According to long standing State Department procedures, all applicants are permitted to file applications at any U.S. consular post subject to that post's discretion. However, the post in Lima, Peru has noted that it is amenable to receive applications from Venezuelans. Further, after Lima's statement, the State Department has designated the US Consulate in Bogota, Colombia to process applications for Venezuelans.

5) H-4 Visa Employment Authorization Termination Regulation goes to OMB

On February 22, AILA announced that the long pending threatened “Notice of Proposed Rulemaking” terminating the H-4 employment program went to the Office of Management and Budget for clearance on February 20.

The prior administration had very narrowly crafted this provision to make the U.S. more competitive in the international professional market by permitting spouses of long-term H-1B holders to be employed. The provision primarily affected Indian and Chinese spouses of principals awaiting long delayed employment based permanent visas. Apparently, even this narrow provision to aid U.S. competitiveness in attracting foreign personnel was too much for the xenophobic attitude of the current administration.

6) USCIS Announces “New Online Tools Reduce Wait Time for Callers”-Or does It?

As noted in last month’s Memo at item 3, Info Pass has been replaced in NYC, as well as many other USCIS offices. Inquiries are now to first be made to the USCIS “Contact Center”. On February 25, USCIS announced, under the above heading, that the Contact Center “is currently experiencing higher than normal wait time for callers to speak to a representative.” It suggested use of on-line tools. Gosh, who could have foreseen these longer wait times, especially since the announcement caption says that times have been reduced. Looks like someone at USCIS wins the George Orwell Award for February.

7) U.S. Diplomatic Posts in China Change Locations for H and L Nonimmigrant Visa Processing

On January 30, the State Department and U.S. Diplomatic posts in China shared the following with AILA:

The United States Embassy in Beijing and Consulates General in Mission China would like to take this opportunity to advise the American Immigration Lawyers Association that changes have been made to consolidate the processing in China of H and L visa applications for foreign nationals seeking to work in the United States. Starting March 1, 2019, interviews for H and L visas will be conducted only at the U.S. Embassy Beijing, U.S. Consulate General Guangzhou, and U.S. Consulate General Shanghai. We will no longer be conducting H or L visa interviews at U.S. Consulate General Chengdu or U.S. Consulate General Shenyang. We have made these changes due to the volume and complexity of H and L visa cases and to ensure that we have the proper resources and expertise to efficiently process them. For more information, please go to:

<http://www.ustraveldocs.com/cn/cn-niv-typework.asp#WhentoApply>"

8) ICE Arrests in New York City, Long Island, and the Hudson Valley

On January 29, ICE published a News Release, "ICE Arrests 118 During Operation Cross Check In New York." The sweep took place from January 14 through 18. The Release stated:

During the operation, ICE's Enforcement and Removal Operations (ERO) arrested 118 individuals for violating U.S. immigration laws. Of those arrested, more than 107 were convicted criminals or had criminal charges pending, more than 55 had been issued a final order of removal and failed to depart the United States, or had been previously removed from the United States and returned illegally. Several had prior felony convictions for serious or violent offenses, such as child sex crimes, weapons charges, and assault, or had past convictions for significant or multiple misdemeanors

It would appear that eleven individuals were "collateral damage." Of the 107 "convicted criminals or had criminal charges pending" there was no indication as to the specific charge, or how long ago was the conviction. In the "pending" category, there is no indication as to the seriousness of the charge (which has not been proven beyond a reasonable doubt.) Of the 111 "criminals", 14 specific serious crimes were listed which makes one wonder about the serious threat to the public welfare of the remaining 97. Would they have benefitted from the exercise of prosecutorial discretion by USCIS in not pursuing removal during the Obama administration? ICE News Releases have also been criticized for listing all crimes charged separately, although one individual may have several charges, thereby exaggerating the serious of any supposed danger. The release also contains a lecture on the evils of sanctuary cities. The Press Release may be found [here](#).

9) University of Farmington-Continued

Last month's Memo contained an item about the ICE University of Farmington sting (for which ICE gets credit-sorry). The January 30 "News Release" (found [here](#)) puts ICE's spin on their operation.

According to the indictments, from approximately February 2017 through January 2019, the defendants, a group of foreign citizens, conspired with each other and others to facilitate hundreds of foreign nationals in illegally remaining and working in the United States by actively recruiting them to enroll into a metro Detroit private university that, unbeknownst to the conspirators, was operated by HSI special agents as part of an undercover operation. As part of

the scheme, the defendants/recruiters assisted foreign citizen “students” in fraudulently obtaining immigration documents from the school and facilitated the creation of false student records, including transcripts, for the purpose of deceiving immigration authorities. The illegal documents obtained as a result of the conspirators’ actions were based on false claims, false statements, and fraud since the purported foreign students had no intention of attending school, nor attended a single class, and were not bona fide students. All participants in the scheme knew that the school had no instructors or actual classes. The defendants intended to help shield and hide their customers/“students” from United States immigration authorities for money and collectively profited in excess of a quarter of a million dollars as a result of their scheme.

“We are all aware that international students can be a valuable asset to our country, but as this case shows, the well-intended international student visa program can also be exploited and abused,” stated United States Attorney Matthew Schneider.

Homeland Security Investigations special agents uncovered a nationwide network that grossly exploited U.S. immigration laws. These suspects aided hundreds of foreign nationals to remain in the United States illegally by helping to portray them as students, which they most certainly were not. HSI remains vigilant to ensure the integrity of U.S. immigration laws and will continue to investigate this and other transnational crimes,” said Special Agent in Charge Francis.

If convicted the defendants face a statutory maximum penalty of five years in federal prison.

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.