

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>

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Eugene Goldstein
Lucy G. Cheung
Michael J. Goldstein

MEMORANDUM

To: **International Education Program Administrators**

- 1) Revised Form I-539 Issues
- 2) Arrival/Departure I-94s Switch to Alpha/Numeric System
- 3) Fraud and Enforcement Issues:
 - (a) ICE Holds One Way Teleconference
 - (b) H-1B Employer Data Hub
 - (c) USCIS to Introduce "Tip Form"
 - (d) ICE Arrest 123 DUI 'Criminals' in New Jersey
- 4) A User of Drugs Does Not Have Good Moral Character
- 5) H-1B Developments
 - a) H-1B Cap Met in First Week
 - b) New I-129
- 6) TPS, DED Issues

1) Revised Form I-539 Issues

On March 1, USCIS' Public Engagement Division held a teleconference to discuss the new revised Forms I-539 and I-539A, (application to change/extend nonimmigrant status, form for supplemental information for family derivatives). The major changes were discussed in our March Memo. The Teleconference noted several items of interest:

...

Q. If someone is here on a B visa and wants to change to F status, they must submit B visa extension applications every six months until the change to F is adjudicated. Is there a biometrics fee for every extension? Do they have to submit two fees with the original application that includes both an extension and a change of status application?

A. Yes, there is a biometric services fee for every extension application. Also, a single Form I-539 cannot be used to request both extension and a change of status. You must make a single selection in Part 2 for application type.

...

Q. Can an applicant who is making several applications at the same time use one set of fingerprints for all the applications? Currently, for the Vermont Service Center, a person changing to F-1 student status must file three or four applications (at already \$370 each) because it is taking Vermont 12.5-15 months to adjudicate and many must “bridge the gap” with B-2 applications for six months each. These are all sent at the same time, usually in the same envelope, and are all adjudicated at the same time (12.5-15 months after they are sent).

A. We require a biometric services fee with each Form I-539.

2) Arrival/Departure I-94s Switch to Alpha/ Numeric System

Although paper I-94s are now unusual, as CBP has switched to an electronic system, there still remains the I-94 number. CBP posted a Notice ([here](#)) that it is changing from an all numeric system to an alpha/numeric system, as it has run out of numbers. The April 2 posting states:

Beginning in May 2019, I-94 numbers will be alphanumeric. Currently, I-94 numbers are 11 digits long and only contain numbers. In order to minimize program impact resulting from the

depletion of numeric-only I-94 numbers and to create a long-term solution for the creation of new numbers, CBP is switching to alphanumeric I-94s. I-94 numbers will remain at 11 characters but will follow the format of 9 digits, followed by a letter in the 10th position, and a digit in the 11th position. Unexpired I-94s issued in the current numeric-only format will continue to be valid until the Admit Until Date printed on the paper I-94 and/or the date displayed on the public I-94 website at: <https://i94.cbp.dhs.gov/i94/#/home>

3) Fraud and Enforcement Issues

Under the heading: Fraud is the last refuge of a xenophobe, are the following items:

(a) ICE Holds One Way Teleconference

On April 18, ICE's Office of Public Affairs held a "Buy American and Hire American Listening Session". The session was on the theme of ... "strengthening protections of U.S. workers and implementing the Buy American and Hire American (BAHA) Executive Orders (EO)." ICE stated:

During this listening session, USCIS and other attendees will hear feedback from displaced U.S. workers, industry leaders, practitioners, and academics. Their input will enable USCIS to determine the effectiveness of its efforts to implement the BAHA EO.

It was noted that all callers were to be in a "listen-only mode." This session speaks for itself.

(b) H-1B Employer Data Hub

On April 1, USCIS posted "Understanding our H-1B Employer Data Hub" which may be found [here](#). The posting notes that the Data Hub is:

...to provide information on employers petitioning for H-1B workers. The data hub provides an additional layer of transparency to the H-1B program by allowing the public to search for H-1B petitioners by fiscal year, NAICS code, employer name, city, state, or ZIP code. USCIS processes an average of 8 million applications, petitions, and

requests annually. These include more than half a million [Form I-129, Petition for a Nonimmigrant Worker](#), petitions for H-1B workers and other employment-based nonimmigrant workers. We receive numerous requests from Congress, research institutions, the media, and the public about the H-1B program and who uses it. We strive to make as much data about our operations available to the public as possible.

Finally, there is a place you can send you students who want a list of employers who sponsor H-1Bs! Well, sort of. The Hub seems to list employers who have had H-1B petitions processed by USCIS, there may be many other employers who agreed to sponsor, but whose petitions were not lucky enough to win the lottery.

(c) USCIS to Introduce “Tip Form”

On February 15, USCIS published a Notice in the *Federal Register* for a “Tip Form.” According to the Notice:

The USCIS Tip Form will facilitate the collection of information from the public regarding credible and relevant claims of immigration benefit fraud impacting both open adjudications as well as previously approved benefit requests where the benefit remains valid.

What is “credible and relevant” will be determined by USCIS – which is troubling, but a topic for another day. In any event, comments suggesting that the form be named the “Rat Out Your Neighbor Form” will probably not be accepted.

(d) ICE Arrests 123 DUI ‘Criminals’ in New Jersey

On April 8, ICE, Enforcement and Removal issued a “News Release” (found [here](#)). Nine individuals were noted as having more serious crimes in addition to DUIs. It was also noted that:

...the great majority were arrested or previously convicted of driving under the influence.

It would appear that not every arrest involved DUIs or more serious crimes, as “collateral damage” was not enumerated. It was also not mentioned how old or serious the DUI charge had been, nor whether there had been a conviction.

4) A User of Drugs Does Not Have Good Moral Character

On April 19, USCIS issued a “Policy Alert” on the subject “controlled Substance-Related Activity and Good Moral Character Determinations”. The alert noted that some states have decriminalized cultivation, possession, distribution and use of both medical and recreational marijuana, but federal law considers marijuana a “controlled substance”. The Policy Alert highlights are:

- Clarifies that violation of federal controlled substance law, including for marijuana, established by a conviction or admission, is generally a bar to establishing GMC for naturalization even where the conduct would not be a violation of state law.
- An applicant who is involved in certain marijuana related activities may lack GMC if found to have violated federal law, even if such activity is not unlawful under applicable state or foreign laws.

It must be noted that the conviction must be of federal law, and that “good moral character” in this scenario is related to naturalization. However, all nonimmigrants should be made aware of the possible, potential implications of activities which may appear to be harmless, but could be a problem under our confused and inconsistent drug laws.

5) H-1B Developments

(a) H-1B Caps Met in First Week

On Friday, April 5 USCIS posted a Memorandum (found [here](#)) that the annual 65,000 H-1B cap had been met for 2020. USCIS later determined that the 20,000 cap had also been met. The cap has been met during the first week for all years since the recession ended.

USCIS made its’ formal announcement on April 11:

On April 11, USCIS used a computer-generated random selection process to select enough H-1B petitions to meet the congressionally-mandated cap and the U.S. advanced degree exemption, known as the master’s cap, for fiscal year (FY) 2019.

USCIS received 190,098 H-1B petitions during the filing period, which began April 2, including petitions filed for the advanced degree exemption. USCIS [announced](#) on April 6, that it had received

enough H-1B petitions to reach the statutory cap of 65,000 and the master's cap of 20,000. USCIS will reject and return all unselected petitions with their filing fees unless the petition is a prohibited [multiple filing \(PDF, 119 KB\)](#).

USCIS conducted the selection process for the master's cap first. All unselected master's cap petitions then became part of the random selection process for the 65,000 cap.

The full text may be found [here](#) .

This year 32.5% of H-1B applications were accepted under the caps. On March 29, USCIS also announced that cap subject premium processing applications would begin on May 20. Non premium processing applications "will not begin until at least June 2019". See: [here](#).

(b) New Form I-129

Meanwhile, on March 21, a new Form I-129, with a January 31, 2019 date was released. On or after May 20, only the new form will be accepted. The I-129, Petition for Nonimmigrant Worker, is principally used for the H-1B, O-1 and L-1 status, among others. The new form may be found on the USCIS website.

6) TPS, DED Issues

As mentioned in our April Memo, TPS has been extended for South Sudan until November 2, 2020. TPS was also extended for Sudan, Nicaragua, Haiti, and El Salvador through January 2, 2020 as the result of active litigation, as set forth in a Notice in the *Federal Register* of March 1. An additional Preliminary Injunction order against the termination of TPS for Haiti was issued on April 11, 2019 in *Saget v. Trump* (E.D.N.Y. 1:18cv 01599-wfk-st) Also, Liberia's period of Deferred Extended Departure (DED) was extended to March 20, 2020 as a "wind-down" period. The *Federal Register* Notice for Liberia appeared on April 3. A USCIS Announcement (found [here](#)) for South Sudan was posted on April 5, and the *Federal Register* Notice appeared on April 3.

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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