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MEMORANDUM

To: **International Education Program Administrators**

From the Desk of Eugene Goldstein

On October 8, AILA posted that USCIS had released a technical update to the USCIS Policy Manual. This change replaced all instances of the term “foreign national” with the term “alien” throughout the Policy Manual. The term is shorthand for the statutory term “any person not a citizen or national of the United States.” It seems that USCIS has erased many years of progressive thinking which granted respect as human beings to people from other countries. If one is no longer considered to be a “person”, all civilized constraints to their treatment can be removed.

The recently published book *Border Wars* by Julie Hershfield Davis and Michael D. Shear of the *New York Times* discloses that, last March, the President wanted to build a moat at Laredo, Texas and fill it with snakes and alligators (presumably, those caught after he drained the Washington D.C. swamp). In addition, he wanted to shoot illegal border crossers. When told that doing so would not be legal, he suggested only shooting these folks in the legs to slow them down. When this was also pointed out as being illegal, he was unhappy. Ultimately, he fired the Homeland Security Secretary with whom his advisor Steven Miller disagreed, as being too restrained. Her “Acting” Homeland Security replacement is also gone. Mr. Miller has also been reported to be responsible for the rollback of refugee admissions to 18,000 annually, which had been 160,000 in 2016. Mr. Miller’s grandfather fled from eastern Europe before Mr. Miller’s xenophobic predecessors cut off virtually all refugees before and during World War II. Mr. Miller needn’t worry about blocking any of his family members from eastern Europe, they never made it out. The President’s Proclamation of September 26 which rolled back refugee admissions may be found [here](#).

Last month we noted that certain USCIS forms (including Forms I-129 and I-539) would not be accepted after October 15, and that only new editions containing the new affidavit of support requirements would be accepted. Unfortunately, those new forms

had not been issued. But, fear not. On October 11 four U.S. District Courts enjoined the imminent imposition of the new restrictive affidavit of support requirements. As these were Mr. Miller's brainchild and high priority – his day must have been spoiled. The *New York Times* provided a good comprehensive article on October 12.

Finally, the Guardian has reported that in early September about 20 STEM F-1 students from Iran, with already vetted and issued visas, arrived at their departure airports only to be told that their F-1 visas had been revoked, without any reasons or prior notice, although they had mostly been issued in June or July. They were all revoked between August 27 and 31, just before flight time. AILA was advised by the State Department that they were "not aware of the situation at all".

- 1) SEVP Portal Will Limit Student Access to Six Months After OPT End Date
- 2) DOS Testimony on "Enhanced Automated Screening"
- 3) H-1B Electronic Registration Expected to be Effective for FY 2021 Cap Season
- 4) Congressional Research Service "Nonimmigrant and Immigrant Visa Categories: Data Brief"
- 5) Department of State Delays J-1 Two Year Waiver Changes
- 6) English Language Translations
- 7) Premium Processing Fee Increase
- 8) TPS Work Authorization Extended for El Salvador

- 1) SEVP Portal Will Limit Student Access to Six Months After OPT End Date

On October 2, SEVP posted a "Broadcast Message: SEVP Portal Release 1.10- Closing Old Portal Accounts" to all DSOs and PDSOs at SEVP Certified schools.

The message ends the indefinite open period for student accounts starting October, 2019, (although the message goes on to say that: "These upgrades...are expected in fall 2019") and limits the open period to six months from the completion date of OPT. The release notes that an email notification will be sent five months after OPT authorization ends advising that access will end in 30 days, and for the student to make a copy of the portal record for future reference. According to the Message, another email will be sent on the day portal access ends.

The message advises that "...details will be available on the [SEVP Portal Enhancements](#) on the ([SEVP Portal Help](#)) section of study in the states".

2) DOS Testimony on “Enhanced Automated Screening”

In testimony before the House Judiciary Committee Sub-committee on Immigration and Citizenship and Foreign Affairs Committee Subcommittee on Oversight and Investigations on September 24, Edward Romatowski, Deputy Assistant Secretary, Bureau of Consular Affairs, discussed recent developments about vetting of visas under Presidential Proclamation 9645 of September 24, 2017, and subsequent modifications. Based upon new procedures for reviewing subjectivity to visa bars, and for waivers, Mr. Romanowski testified that:

The new enhanced review is automated, occurs prior to the interview, and provides consular officers with the information required to make most P.P. 9645 waiver determinations much more quickly. It is now possible that many cases may be issued within days of the application, should the security check done prior to the interview not show any concerns – once the consular officer has established all three criterion of the waiver, the visa may be issued.

While it is too early to ascertain the full impact on new P.P. 9645-subject applications, initial evidence indicates that consular officers are now able to make most waiver decisions within a few days of the visa interview. In the short time this system has been in place, the month-to-month change in visas issued pursuant to a waiver rose from a steady 10 to 12 percent from before the new system, to more than 50 percent each month. This is evidence that under the new system, applicants who qualify for a waiver will receive their visas much sooner. Meanwhile, the Department is working diligently to review and process to conclusion existing P.P. 9645-subject cases. Since September 14, 2019 the Department issued more than 7,600 visas pursuant to a waiver of P.P. 9645. We anticipate that a majority of pre-July 2019 waiver cases pending with the Department, most of which require some degree of manual review, should be completed by the end of 2019 or soon thereafter. The new automated system is intended to significantly increase the speed and efficiency of the vetting process for both currently pending and future P.P. 9645-subject applications while enhancing security standards.

Whether these bureaucratic “enhancements” will have any effect on delays caused by “administrative processing” for applicants from countries not requiring waivers was not discussed.

3) H-1B Electronic Registration Expected to be Effective for FY 2021 Cap Season

In a letter to AILA on September 30, 2019, USCIS Acting Director Ken Cuccinelli II advised that:

With regard to electronic registration for FY 2021, USCIS intends to implement the registration process for the FY 2021 cap season, subject to continued testing of the system. As stated in the final rule, the Department of Homeland Security will publish a notice in the Federal Register to announce the initial implementation of the H-1 B registration process in advance of the cap season in which it will first implement the requirement.

The Acting Director advised that the result of a first round of testing feedback had been incorporated and further testing of updated designs was done in early September. Further outreach and training prior to final implementation will be done.

Following the September 30 letter, the *Federal Register* of October 9 carried a 30 day extension to November 8, 2019 of the prior 60 day Agency Information Request for the H-1B Registration tool. For odds on whether the registration tool will be ready for the FY21 cap season, check your local bookie.

Also, of interest in an article [Forbes](#) published on October 21 “Ken Cuccinelli, U.S. Immigration Services Chief, Boasts of Increasing Bureaucracy.”

4) Congressional Research Service “Nonimmigrant and Immigrant Visa Categories: Data Brief”

On October 1, the Congressional Research Service released a useful, up to date summary of immigrant and nonimmigrant visa categories with a description of each category; the permitted duration of stay for each nonimmigrant category; any cap for each category; the number of visas for each category; and the number of visas for each category issued in FY17. The CRS document may be found [here](#).

5) Department of State Delays J-1 Two Year Waiver Changes

In minutes of a liaison meeting between DOS and AILA held on October 3, 2019, it was noted, among other items, that a previously announced “Final Rule” which would change the J-1 exchange visitor two year home residency requirement by “Interim Final Rule” to be posted in July, 2018 and subsequently planned for issuance in December, 2019 will not be issued as it is still under consideration by DOS. No further explanation was provided.

6) English Language Translations

AILA has advised that there have been reports of RFEs and denials for faulty English language translations, especially if one translation certificate is used for multiple documents, or if the certificate is found to be deficient under 8CFR103.2(b)(3). All foreign language documents must be accompanied by a full English language translation with a certification by the translator stating that the translation is complete and accurate, and that the translator is competent to translate the foreign language into English. AILA suggested that as an alternative to using a certificate for each document, one certification could be used which specifically lists all the translated documents. This later suggestion assumes that the USCIS adjudicator will actually read the certification.

7) Premium Processing Fee Increase

On October 30, USCIS announced that effective November 29, the premium processing fee will increase from \$1,410.00 to \$1,440.00 for premium processing of forms I-129 and I-140. It will now cost \$30.00 more to have your case denied within 15 days. The USCIS announcement may be found [here](#). The October 31, *Federal Register* “Final rule” may be found [here](#).

8) TPS Work Authorization Extended for El Salvador

On October 28, the Department of Homeland Security announced that work permits for El Salvador TPS holders would be extended through January 4, 2021; and that 365 days will be added for repatriation beginning after the conclusion of TPS related lawsuits. This extension was made as part of a more comprehensive agreement with El Salvador which may be found [here](#). This agreement appears to temporarily resolve the present administration’s problem of just how it will remove roughly 250,000 people when the Immigration Courts are already massively backlogged. Then again, in fourteen months the problem may very possibly be permanently resolved. Query? Perhaps, DHS is looking ahead fourteen months. It is also noted that the USCIS announcement stated: “The United States is the most humanitarian country on earth and will continue to be”.

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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