

Immigration Update

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DS-160

- Most consulates now accept DS-160, completed, signed, submitted electronically
- Incorporates all NIV forms (DS-156, 156K, 157, 158, 3032)
- Applicant has option to upload digital photo
- DS-160 data will be collected CCD
- DOS is experimenting with off-site biometrics collection by contractors similar to USCIS Application Support Centers
- See
 - <https://ceac.state.gov/genniv/>
 - http://travel.state.gov/visa/laws/telegrams/telegrams_4547.html
- Recent Meltdown??
 - AILA reports widespread malfunction of DS-160, and many posts have begun again accepting DS-156, etc. Visa applicants who are unable to use DS-160 need to check consulate web site concerning whether DS-156, etc. acceptable.

TCN - Mexico

- All Posts in Mexico Now Process TCNs (appts. online/by phone)
- TCNs Who **Can** Apply in Mexico (http://mexico.usembassy.gov/eng/evisas_third_country.html)
 - Applicants seeking to *renew* their visa in any category, except B1/B2, *if the initial visa was issued in the applicant's home country or at a post in Mexico*
- TCNs Who **Cannot** Apply in Mexico
 - Granted change of status in U.S., seeking visa for the new class.
 - Entered U.S in one category, seek to re-enter in different category
 - B1/B2 visa applicants
 - Out of status or overstayed
 - Entered the U.S. under the Visa Waiver Program
 - Obtained prior visa in a country other than that of legal residence
- Notice states: "If you were informed when you obtained the original visa in your home country that you are subject to National Security Entry Exit Registrations (NSEERs) or are a national of North Korea, Cuba, Syria, Sudan or Iran, you are not eligible to renew your visa in Mexico."

TCN-Canada

- AILA has noted increased denials of TCN visa applications in Canada, particularly
- **TCNs with Foreign Degrees**
 - Increasingly TCNs with foreign degrees, who have not been previously issued H-1B visas from their home posts, are being refused visas in Canada and referred to their home countries for visa processing.
 - While Mission Canada does not state this as official policy, it does warn on its website that this situation may happen (http://www.consular.canada.usembassy.gov/usa_visa.asp), in the H-1B section, which provides "Evidence of qualifications must be original or certified copy. Consular officers in Canada may refuse to issue a visa to H-1B applicants if their education and/or work experience is solely or predominantly from a country other than the U.S. or Canada."
- **TCNs Applying for Visas in Canada Who Last Entered the U.S. as Visitors**
 - Mission Canada generally discourages TCNs from applying at Canadian posts if they last entered U.S. in visitor (B-1/B-2) status, and this is explained in a note in the NVARs On-line Appointment System.
- This is somewhat consistent with developments concerning TCN processing in Mexico
- So, while a visa application in home country is usually preferable, individuals in these circumstances should be warned against TCN applications

HIV Removed

- Removed January 2010
- FAM - 9 FAM 40.11 N9.1-2(c) - emphasizes that while foreign nationals with HIV are not medically ineligible, they still must demonstrate that they will not become public charges in the United States.
- Forms DS-160 and DS-230 include the following question: "Have you ever been afflicted with a communicable disease of public health significance or a dangerous physical or mental disorder, or ever been a drug user or addict?" As of January 4, 2010, HIV-positive foreign nationals no longer have to answer "yes" to this question based solely on their HIV status. Instead, applicants who are HIV-positive and can otherwise answer in the negative to this question may now simply answer "no."
- DOS still working out how to deal with applicants (NIV and IV) that have previous denials for HIV

Visa Issuance

- Will Consular Officers begin asking for proof of insurance at visa application?
- See DOS Student & EV Update Cable (02/2009)
 - http://travel.state.gov/visa/laws/telegrams/telegrams_4501.html
 - “While not required for F or M applicants, medical insurance could help establish an applicant's eligibility.”
- “Per 22 CFR 62.14, J-1 and J-2 travelers are required to have adequate medical insurance in order to participate in an exchange program. While F and M students and their dependants are not required to have U.S. medical or travel insurance in order to qualify for a visa, most universities require students to have medical insurance. Assurance that a student would be able to afford any health care expenses in the United States could certainly help a student overcome public charge concerns. 9 FAM 41.61 N6.1-3 and 41.62 N 8.1 (c) will be added to reflect this reminder.”
- Advise students to travel with proof of health insurance if available and an explanation if not

DOS creates Student/Exchange Visitor Visa Center

- Schools may e-mail fmjvisas@state.gov to inquire about status of F, M, J visa applications
- Applicant should use the Public Inquiries number 202-663-1225
- Include date of inquiry, nature of inquiry (e.g. delay, communication problem), and post information, applicant's information, DSO/RO information

I-515A

- SEVP I-515A Guidance (<http://www.ice.gov/doclib/sevis/pdf/bmsgi515s1.pdf>)
- A student who re-enters without required documentation may be allowed entry by the Port-of-Entry via Form I-515A (formerly I-515).
- Student will be given a 30 day I-94, must report to the DSO, and submit documents to
 - Student and Exchange Visitor Program
 - ATTN: I-515A PROCESSING TEAM
 - Potomac Center North
 - 500 12th Street SW
 - Washington, DC 20024-6121
- Mail/ courier is the only accepted practice. They will be processed and returned within 10 to 15 business days. If the DSO or RO has not received the adjudicated documents back within this time frame, they may inquire by email at SEVIS.SOURCE@dhs.gov or phone on 703-603-3400.
- Or SEVIS.I-515@dhs.gov to inquire about previous documents

US VISIT

- USVISIT expanded to include Permanent Residents
- Effective January 18, 2009, all aliens will be required to be enrolled in USVISIT when they enter the U.S., except Canadian citizens applying for admission as B-1/B-2 visitors, and those specifically exempted under DHS regulations.
- USVISIT requirements now apply to:
 - Lawful Permanent Residents (LPRs)
 - Aliens seeking admission on immigrant visas
 - Refugees and asylees
 - Aliens paroled into the United State
 - Aliens applying for admission under the Guam Visa Waiver Program

- Don't forget about these resources in NAFSA "Document Library":
 - Compiled pre-arrival materials from several universities
 - NAFSA's "10 Points to Remember when Applying for a Nonimmigrant Visa" and "Preparing for an F-1 Visa Interview"
 - CBP Fact Sheet on Automatic Revalidation (5/9/2009)
- Note: "State sponsors of terrorism" apparently reduced to four: Iran, Syria, Sudan, Cuba (Libya, Iraq, and North Korea no longer on list but nationals should expect additional screening)

Revised Exchange Visitor Skills List

- See it at:
 - 74 Fed. Reg. 20107-20131(April 30, 2009)
 - http://www.nafsa.org/uploadedFiles/2009_revised_exchange.pdf?n=2895
- DOS cable explains its application to current EVs:
 - "Exchange visitors who entered the U.S. on a J-1 visa prior to June 28, 2009 . . . governed by the 1997 Exchange Visitor Skills List . . . only if their country remains on the revised 2009 list.
 - Exchange visitors whose countries were removed from the . . . skills list are retroactively not subject to the two-year home residence requirement based on the Exchange Visitor Skills List, even if they entered the U.S. prior to the effective date."
 - "Residents of countries who remain on the . . . 2009 Skills list [with] J-1 visa based on a previous skills list . . . remain subject to Section 212(e), . . . even if their country has removed that skill from the . . . List. Exchange visitors are subject, based on the skills list that was in effect when they first obtained the J-1 visa."
- See cable at:
 - http://travel.state.gov/visa/laws/telegrams/telegrams_4548.html
 - <http://www.nafsa.org/resourcelibrary/Default.aspx?id=16254>

Countries on the 2009 Skills List

Per 74 FR 20107 (4/30/09) (AILA InfoNet Doc. No. 09042964)

The following countries are on the skills list:
Please note all new countries to the list are in red.

- Albania
- Algeria
- Argentina
- Armenia
- Bahrain
- Bangladesh
- Belize
- Benin
- Bolivia
- Brazil
- Burkina Faso [formerly Upper Volta]
- Burma [formerly Myanmar]
- Cambodia
- Cameroon
- Cape Verde
- Chile
- China—Mainland
- Colombia
- Congo (Kinshasa) [Democratic Republic of the Congo, formerly Zaire]
- Costa Rica
- Djibouti
- Dominican Republic
- East Timor
- Ecuador
- El Salvador
- Eritrea
- Ethiopia
- Fiji
- Gabon
- Gambia
- Georgia
- Ghana
- Guatemala
- Guyana
- Haiti
- Honduras
- India
- Indonesia
- Jamaica
- Kazakhstan
- Kenya
- Kosovo
- Laos
- Lebanon
- Liberia
- Malawi
- Malaysia
- Mali
- Mauritania
- Mauritius
- Montenegro
- Mozambique
- Namibia
- Nepal
- Nicaragua
- Niger
- Nigeria
- Oman
- Palestinian Authority (Gaza and West Bank)
- Paraguay
- Peru
- Philippines
- Romania
- Rwanda
- Saudi Arabia
- Senegal
- South Africa
- South Korea
- Sri Lanka
- Swaziland
- Tajikistan
- Tanzania
- Thailand
- Togo
- Tonga
- Trinidad and Tobago
- Turkey
- United Arab Emirates
- Uruguay
- Venezuela
- Yemen
- Zambia

Countries No Longer on Skills List

Per comparison of 74 FR 20107 (4/30/09) and 62 FR 2447 (1/16/97)

Citizens of the following countries are no longer subject to the foreign residence requirement based on the Skills List:

- Afghanistan
- Azerbaijan
- Bahamas
- Botswana
- Burundi
- Central African Republic
- Chad
- Cote d'Ivoire
- Croatia
- Czech Republic (removed 12/24/1997)
- Equatorial Guinea
- Guinea
- Guinea-Bissau
- Hungary
- Jordan
- Kuwait
- Lesotho
- Macedonia
- Madagascar
- Malta
- Morocco
- Pakistan
- Panama
- Papua New Guinea
- Poland
- Qatar
- Sierra Leone
- Singapore
- Somalia
- Sudan
- Tunisia
- Uganda
- Western Samoa
- Zimbabwe

OPT

- By now, the OPT “Cap-Gap/STEM Extension” rule is not new, but still some confusion/concerns about:
 - Allowed employment
 - Travel
 - Violations of status due to unemployment
- And some students need information about making the transition to H-1B

OPT

- SEVP guidance “Updates to Post-Completion Optional Practical Training (OPT),” April 25, 2008 (http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_04062009.pdf):
- 7.2.1. What types of employment are allowed for . . . OPT? (paraphrased)
 - All OPT employment must be in a job related to the student’s degree program
 - For students who are NOT on a STEM extension, this employment may include:
 - Paid employment, at least 20 hours per week, including
 - Multiple employers
 - Short-term multiple employers (performing artists)
 - Work for hire (independent contractor)
 - Self-employed business owner
 - Employment through an agency or consulting firm
 - Unpaid employment (volunteer/unpaid intern), if doesn’t violate any labor laws

OPT

- 7.2.2. What types of [STEM extension] employment are allowed? (paraphrased):
 - Students authorized for an OPT STEM extension must work at least 20 hours per week for an E-Verify employer in a position directly related to STEM degree
 - For students who are on a STEM extension, this employment may include:
 - Paid employment (only)
 - Multiple employers (all employers must be enrolled in E-Verify)
 - Work for hire (independent contractor)
 - Self-employed business owner (must register business with E-Verify, work full time)
 - Employment through an agency or consulting firm
 - Unpaid employment does not suffice for maintenance of status

OPT

- **Violations of status due to unemployment:**

- **Regulation:** (8 CFR 214.2(f)(10)(ii)(E))

- “Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT”
- Except that “students granted a 17-month [STEM] OPT extension may not accrue an aggregate of more than 120 days of unemployment . . .”

- **SEVP Guidance:**

- When student doesn’t have employment, even weekends count
- 10 days between jobs don’t count
- If student doesn’t receive EAD (and it’s not returned to USCIS) and applies for a new one, clock starts 10 days after replacement EAD issued
- Time outside U.S. doesn’t count if employed before leaving and traveling for work or employer approves leave (but, if not employed, leaving U.S. doesn’t “stop the clock”)

- **Not much evidence of enforcement (H-1B RFEs, etc.) but . . .**

OPT

- **Informing students about the transition to H-1B**
 - If you have a job, qualify for it, and have at least a bachelor's degree, employer can file on April 1 even if you are still in school (usually only grad. students)
 - Safest to assume that both quotas will be immediately exhausted
 - Watch USCIS web site and reliable sources for news and changes to process
 - Even if eligible for STEM extension, have petition filed every April 1 until you "win"
 - Have your petition prepared by an experienced expert (don't be co.'s first self-filed one)
 - Any minor mistake (error on check or incorrect box checked on form) may be catastrophic
 - File as soon as possible (waiting until last day subjects you to logistical failure)
 - If your petition is wait-listed or rejected, focus on "plan b" (have a "plan b"!)
 - Avoid the "scattershot" approach (current employer, possible future employer, and scam agency file petitions for you, but you'll probably go to grad. school)
 - Do not allow employers who do not plan to employ you file a petition for you
 - Avoid fraud and/or illegal "benching" and potential status problems

OPT

Lockbox Addresses for Several Key I-765 Types

USCIS Phoenix and Dallas Lockbox mailing addresses for the following I-765 application types commonly used by NAFSA members:

- (c)(3)(A), Pre-Completion OPT
- (c)(3)(B), Post-Completion OPT
- (c)(3)(C), 17 Month STEM OPT Extension
- (c)(3)(ii), F-1 Internship with an Interational Organization
- (c)(3)(iii), F-1 Seeking Off-Campus Employment Due to Severe Economic Hardship
- (c)(5), J-2 dependent of an exchange visitor seeking employment authorization
- (c)(6,) M-1 Practical Training (according to a 03/15/10 NAFSA liaison meeting with USCIS, an M-1 practical training I-765 should only be filed with a lockbox under the limited circumstances where it is filed without Form I-539; if filed with I-539, then the entire practical training package should be sent to the address governing I-539 filings.)
- (c)(9), Pending employment-based Form I-485 applicant (unless filing concurrently with Form I-485, in which case the package should be sent to the I-485 filing address)

If you live in:

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming, Guam, or the Commonwealth of Northern Mariana Islands.

Mail your application to:

USCIS Phoenix Lockbox
For U.S. Postal Service (USPS) deliveries:

USCIS
PO Box 21281
Phoenix, AZ 85036

For Express mail and courier deliveries:

USCIS
Attn: AOS
1820 E. Skyharbor Circle S
Suite 100
Phoenix, AZ 85034

Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Oklahoma, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands, or West Virginia

USCIS Dallas Lockbox
For U.S. Postal Service (USPS) Deliveries:

USCIS
PO Box 660867
Dallas, TX 75266

For Express mail and courier deliveries:

USCIS
Attn: AOS
2501 S. State Hwy. 121 Business
Suite 400
Lewisville, TX 75067

OPT and Cap Gap

- COS to H-1B has to be timely filed while student is in authorized d/s admission
- Proof of status via updated I-20 from DSO
- Work authorized in gap if was in an approved OPT
- If H-1B later denied still gets 60 day grace period according to recent FAQ
- Travel during cap-gap
 - The regulations at 8 CFR 214.2(f)(13) state that a student who has an unexpired Employment Authorization Document (EAD) issued for post-completion OPT and who is otherwise admissible may return to the United States to resume employment after a temporary absence. However, by definition, the EAD of an F-1 student covered under a cap-gap extension is necessarily expired. Consequently, if a student granted a cap-gap extension elects to travel outside the United States during the cap-gap extension period, he or she will not be able to return in F-1 status. The student will need to apply for an H-1B visa at a consular post abroad prior to returning. As the H-1B petition is presumably for an October 1 or later start date, the student should be prepared to adjust his or her travel plans, accordingly.
- Recent FAQs on www.uscis.gov as of April 2010.

USCIS INQUIRIES

- USCIS Guidance on Case Status Inquiries
- USCIS 8/6/2009 instructions on making inquiries with the agency's four Service Centers.

Step 1: Contact the National Customer Service Center (NCSC) at 1-800-375-5283. The NCSC can assist customers, community-based organizations and liaison groups with case related inquiries. Before calling the NCSC please have available your receipt number, alien registration number, type of application filed and date filed. During your call we recommend that you take note of the following information:

- The name and/or id number of the NCSC representative
- The date and time of the call
- Any service request referral number, if a service referral on a pending case is taken

USCIS INQUIRIES

- **USCIS Guidance on Case Status Inquiries, ctd.**
 - **Step 2:** If more than 30 days have passed since you contacted NCSC and issue has not been resolved/explained, email the USCIS Service Center handling the case (as indicated on receipt notice) to check the status:
 - California Service Center: csc-ncsc-followup@dhs.gov
 - Vermont Service Center: vsc.ncscfollowup@dhs.gov
 - Nebraska Service Center: ncscfollowup.nsc@dhs.gov
 - Texas Service Center: tsc.ncscfollowup@dhs.gov
 - *When contacting the Service Centers by email you will need to provide the information outlined in Step 1. If the NCSC did not issue a service request after your call, please indicate the reason the NCSC representative did not issue the request.*
- **Step 3:** In the event you do not receive a response within 21 days of contacting the appropriate Service Center, you may email the USCIS Headquarters Office of Service Center Operations at: SCOPSSCATA@dhs.gov. You will receive a response from this email address within 10 days.

USCIS INQUIRIES, ctd.

- For student issues outside the norm – after going through the NCSC - vsc.schools@dhs.gov
- In general, the vsc.schools box should be used when the issues involved are complex, unusual or particular to the student in question.

Recertification

- The latest, as of April 2, 2010:
 - SEVP has informed NAFSA of plan to begin sending the first group of school recertification notices during the **first week of May, 2010**.
 - Original plan to issue 400 notices, but SEVP says may issue fewer (possibly 100 or less), depending on the number of experienced adjudicators that SEVP can have in place by that time.
 - SEVP is assessing the final "lessons learned" from the beta testing they conducted with several institutions, which may also impact the timing and number of schools included in the first grouping.
 - For SEVP spring 2010 presentation, primer, etc., see:
http://www.nafsa.org/regulatory_information.sec/get_sevis_information/updates_on_f_m_school/

H-1B “FRAUD” HUNT

- **H-1B fraud investigations and site visits**
 - USCIS site visits to H-1B employers to verify the accuracy of petition information
 - DOL questionnaires to some H-1B employees in order to verify information provided in LCA
 - Employers who have been visited by USCIS investigators report:
 - Investigators are not USCIS employees but rather independent contractors
 - Visits are unannounced; the investigators simply show up and begin asking questions
 - Investigators usually ask to speak with an employer’s representative (for instance, the person who signed the petition) and the employee separately
 - Questions mirror those on Form I-129 (where the H-1B performs his/her work, and how much the employee earns, etc.)
 - Employees asked about educational credentials, experience, title, duties, hours and compensation
 - Investigators have asked for a copy of the petition and employees for W-2s, among other things.
 - The DOL questionnaire—directed to the employee, not the employer—seeks some similar information, such as the employee’s duties, hours, rate of pay, work location, when she/her began work, whether she/he receives same benefits as others, etc.
 - The questionnaire instructs employees that they are not required to answer, and notes that it is not intended to imply that the employer has committed any violations

DOL GOES OFF THE RAILS

- **Nationalization of prevailing wage process leads to meltdown**
 - DOL's National Prevailing Wage and Helpdesk Center (NPWHC) began issuing prevailing wage determinations (PWDs) in January
 - Many problems: slow processing (up to 8 weeks), blatantly incorrect PWDs, inability to recognize need to use ACWIA data even if necessary asterisks and magic words present (even for professor jobs!), apparent refusals to use surveys that SWAs agreed to use, etc.
 - To request fix, e-mail FLC.PWD@dol.gov, then consider re-filing or appeal
 - New FAQs: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_03_2010.pdf
- **National Processing Center in Atlanta begins issuing bizarre denials**
 - Denials because ad in "Diverse Issues in Higher Education"
 - "This publication is specifically targeted to specific communities, namely African Americans, Asian Americans, Hispanics and Native Americans [and] is not a journal which would normally be used to advertise for a Lecturer in Mathematics, nor is it a journal most likely to bring a response from able, willing, qualified and available U.S. workers. Therefore, the application is denied."
 - Analyst incorrectly concludes (internet search?) that the journal is electronic only
 - Expect continuing misplaced scrutiny, confusion, misunderstanding of common recruitment vehicles, and advise faculty and staff to expect glitches

EB-1 Practice Pointers from TSC

- Tip 1 : Choose your friends wisely, your reference letter writers even more wisely
- Tip 2 : Making more money than your cubicle mate does not mean you make a lot of money compared to others in your field.
- Tip 3 : USCIS does not build bridges.
- Tip 4 : Double-dipping - Bad at Parties, Good on Petitions

SEVIS by the Numbers

- 36% of all SEVP approved schools are located within the states of California, New York, Florida, Texas, and Pennsylvania.
- China is the country with the highest number of Active students (123,965).
- The leading Major continues to be Business for 156,697 international students.

Immigration Reform

- On March 19, 2010, Senators Schumer (D-NY) and Graham (R-SC) presented, in a *Washington Post* editorial, their blueprint for immigration reform legislation
 - The outline rests on four pillars:
 - Ending illegal employment through biometric Social Security cards
 - Enhancing border and interior enforcement
 - Managing the flow of future immigration to correspond to economic realities
 - Creating a tough but fair path toward legalization for the 11 million people currently in the U.S. without authorization.
 - President Obama calls it “promising” and says “I congratulate Senators Schumer and Graham for their leadership, and pledge to do everything in my power to forge a bipartisan consensus this year on this important issue so we can continue to move forward on comprehensive immigration reform.”
- Who knows . . . ?

Immigration Reform

- On December 14, 2009, Rep. Luis V. Gutierrez (D-IL) introduced comprehensive immigration reform bill, “CIR for America's Security and Prosperity Act 2009 (CIR ASAP),” containing many core principles which immigration advocates consider vital to any comprehensive immigration reform bill, including a pathway to legalization for undocumented workers and students, family unity and labor provisions, smarter and more effective enforcement worker verification systems.
- It is the product of months of collaboration with human rights advocates, labor organizations, and members of Congress.

Immigration Reform

- “DREAM Act” is back
 - On March 26, 2009, Senator Durbin (D-Ill.) reintroduced the Development, Relief and Education for Alien Minors Act of 2007 ([S. 729](#)), better known as the DREAM Act, to provide an opportunity for long-time U.S. residents who were brought to the country as young children to obtain green card status through pursuing higher education or military service.
 - The bill would also allow states to determine residency for in-state tuition purposes
 - On the same day, Rep. Berman (D-Calif.) introduced a companion bill in the House ([H.R. 1751](#))