Beyond Rhetoric; Life on the Ground for International Educators, Students and Scholars

For international educators who rode the tidal wave of statutory, regulatory and policy change involving students and scholars in the past several years, 2006 began with new hope that the US administration was repositioning itself to retain its role as the leading destination for those seeking a US education and/or opportunities in teaching and research. In January 2006, Secretary of State, Condoleezza Rice and the Secretary of Homeland Security, Michael Chertoff, announced a joint plan to address President’s Bush’s desire to provide “secure borders and open doors in the information age.” In spring, 2006, the Undersecretary of State for Public Affairs and Diplomacy, Karen Hughes, stated before a Congressional subcommittee that international exchange programs constituted one of the most important public diplomacy tools in the past 50 years.

However, despite high-level government rhetoric affirming the importance of educational exchange and the value of foreign students and scholars to the US,
economically, culturally and educationally, the state of affairs for those working daily and directly with students and scholars at our higher educational institutions is still decidedly mixed. While the pace of change, in terms of new statutes, regulations and policies, slowed dramatically in 2006, the ongoing challenges of inter and intra federal and state agency communication, the lack of clarity in some areas of the hastily reworked student regulations, the seeming disconnect between federal and state agency public policy goals and the reality of practice “on the street,” and the failure of a technical system to address the realities of educational experience in the US, have made for a more difficult and confusing environment for international students and scholars, and for those that work with them. This paper will highlight some of the more significant challenges faced, as well as recent changes in regulation, policy and practice.

**Information Overload**

One of the most significant challenges faced by international educators is simply the sheer amount of new information and resources needed to do one’s job effectively. The new environment requires the use of one or more data systems in daily work, the need to understand the regulations and/or policies of a multitude of federal and state agencies including three arms of the Department of Homeland Security; Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP) and US Citizenship and Immigration Services (USCIS), as well as, the Department of State’s Exchange Visitor Program Office (DOS EVP), and Visa Office; the Department of Labor (DOL), the Social Security Administration (SSA), the Department of Motor Vehicles (DMV), and the Internal Revenue Service (IRS). The level of understanding and expertise it now takes to accurately assist one’s international population is greater than it used to be. It is difficult, even for adequately staffed and resourced international offices, to keep abreast of all that they need to know to assist their international students and scholars in negotiating the maze of rules and agencies involved in their stay. In the current environment, it is imperative that institutions interested in hosting international students and/or scholars dedicate sufficient staff and resources to their international offices and services.
The Student and Exchange Visitor System

For those working with students and scholars, the Student and Exchange Visitor Information System (SEVIS) is now a principle part of daily business. On a positive note, the ICE SEVP Office (the unit within the Department Homeland Security responsible for managing SEVIS) continues to solicit feedback from affected educational and industry organizations in order to improve the electronic system. This work has focused primarily on incorporating new user-end functionality, technical improvements; educational and training materials, and policy and practice guidance on issues of concern for the user community.

The most recent upgrade to SEVIS on November 17, 2006, for example, incorporated new functionality allowing designated school officials (DSOs) to make or request on-line corrections to a student’s SEVIS status, without requiring a call to the SEVIS Help Desk. Thus far, the change has proved to be an efficient mechanism for correction of some SEVIS records, and is a good example of the value of the working relationship between SEVP and the user-community.

For many professionals, however, the inability of SEVIS, a static database tool, to provide ways to manage their own institutional policies and procedures within the regulatory framework, continues to be a cause for significant concern. This is particularly burdensome for those who work at small schools, and who may be the only certified officer at their institution with responsibility for utilizing SEVIS, for setting institutional SEVIS policy, and for advising the international student population. Two problem areas of this nature are highlighted in the following discussion.

Transfers for Initial Students - The regulations governing F-1 student transfer at 8 CFR 214.2(f)(8)(i) state that “A student who is maintaining status may transfer to another Service approved school by following the notification procedure”… and later in the same paragraph, “An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement.” Both sections referenced are unedited remnants of pre-SEVIS F transfer regulations, and in the pre-SEVIS environment had been subject to varying interpretations by school officials; some deciding that this provision
required that they deny requests for transfer unless the student was already engaged in a full course of study. Practically speaking, for schools that adopted this policy, this usually meant that the student would be obligated to finish a term at the initial institution, in order to start at the beginning of a new term at the transfer school. Other schools felt that once a new (or initial) student had either checked-in with the international office, or alternatively, had formally registered, but prior to initiation of classes, the student would be eligible for transfer.

Immediately following publication of the December 2002 publication of the F/M SEVIS rule, verbal guidance from SEVP suggested that transfer regulation had not been updated appropriately, and that initial F-1 students should be eligible for transfer once they had reported and been SEVIS-registered at the institution issuing the initial SEVIS record and visa eligibility document (Form I-20). An October 17, 2003, policy memo from Michael Garcia, Acting Assistant Secretary of DHS, provided schools with greater flexibility in establishing institutional policies related to the SEVIS registration of initial F students, and in October 2006, SEVP finally put their advice in writing, stating in an FAQ on transfer issues\(^6\) that, “Newly arrived students can transfer if they first report to your school and have been accepted to another DHS-certified school.” However many school officials do not feel comfortable SEVIS “registering” and transferring a newly arrived student who is not yet registered at their institution without regulatory support. For these schools, SEVP guidance on transfer for initial students remains troubling.

**Study/Research Abroad** - The F-1 temporary absence regulation at 8 CFR 214.2(F)(4) allows students to return to school, without a break in their F status, after an absence of less than 5 months. Separately, the practical training provision allows time spent in a “study abroad program” to count towards the eligibility requirements for practical training. In the SEVIS environment, these provisions caused great confusion concerning how to record time abroad, in study or research, in the SEVIS database. In the list of SEVIS termination reasons, “absence of more than 5 months” is an option. Were school officials expected to terminate SEVIS records for students studying or doing research abroad for more than 5 months? What if they were engaged in a
formal “study abroad program” of less than 5 months? How would time abroad in a study abroad program “count” towards practical training eligibility if the previous SEVIS record was terminated, and a new one created for re-entry? Neither the regulations nor the SEVIS database were designed to address the reality of international students studying or doing research abroad.

In response to numerous practice questions, SEVP instructed school officials to keep SEVIS records “active” for those in study abroad programs, even when those programs extended longer than 5 months. While this was welcome news, the regulations on temporary absence do not appear to support the practice. Additionally, active SEVIS records require a physical US address. Students studying abroad do not often retain a valid US address. In meetings and conference calls, SEVP has instructed school officials to variously input either the last US address, or the international office address, but as neither are true, this continues to be a source of unease for school officials.

The larger issue, however, relates to international graduate students doing research abroad. In response to higher education community concerns about how to manage these students within the SEVIS environment, SEVP recognized the practical and public security ideal of one SEVIS record per individual and degree program. Therefore, in verbal statements, they provided guidance that school officials would be permitted to keep SEVIS records active for graduate students engaged in their degree programs and doing research abroad, even if for more than 5 months, and even if not enrolled in a formal “study abroad program”. To date, this guidance has not been put in writing by SEVP, and is unsupported by regulation.

On January 19, 2006, DOS issued a cable that discussed the validity of F/M visas after a break in studies of more than 5 months. The cable addressed a number of points, including that for those taking a break in studies and outside the US for more than 5 months, a new visa would be required, but that those out of the country for more than five months but still actively engaged in activities related to their course of study (such as field research or study abroad) would be considered to be maintaining student status and thus preexisting and unexpired visas would be considered valid.
While this DOS guidance is consistent with SEVP’s verbal guidance on continuing students engaged in study or research abroad for more than five months, the policy remains unsupported by either 8 CFR regulations or written policy guidance from DHS. Without such regulatory support, it is difficult for school officials to feel comfortable manipulating SEVIS address and registration data as needed to keep SEVIS records active, and difficult to advise students engaging in study or research abroad, on the need for new visas.

**Flags at US Ports of Entry (POE)**

In response to reports that CBP port of entry inspectors were inadvertently allowing F-1 students with inactive SEVIS records to re-enter the US, Department of Homeland Security ordered SEVP to provide a record of terminated SEVIS records to the POE database system and to the State Department’s Consular Consolidated Database, or CCD. This seemingly logical step has become a source of considerable difficulty for international visitors and international office staff due to the fact that all Consular Officers or Port Inspectors see in their systems, is a flag that alerts them to the possibility that the visa applicant or entering visitor is a possible “SEVIS violator.” The reason for the SEVIS termination, even a benign one, like, “successful completion of academic program” is not visible, and flags are not cleared, even when a student has long-since graduated and has subsequently approved for another nonimmigrant visa classification, such as H1B temporary worker. Increasingly, international offices have been fielding angry phone calls from former students who miss flight connections, or who experience long waits in secondary inspection, simply because they were once an F-1 student and on completion of their program, their record in the POE system was tagged with a potential “SEVIS violator” flag. This issue is often inflamed by poorly informed POE inspectors who give the impression that the school is at fault and direct the visitor to contact their former school officials. Unfortunately, at the present time, there is no way for SEVP to clear old flags from the port or consular systems without clearance from the DHS Compliance Enforcement Unit (CEU). POE inspectors and consular officials have the authority to issue a visa and/or entry to the US despite the presence of a SEVIS flag, and have been provided with CEU contact information to request flag removal, but in
practice, the number of angry and confused phone calls are increasing. SEVP has agreed to refer difficult cases to the CEU on behalf of school officials, but the net result is that school officials find themselves providing on-going services to individuals who are no longer at their institutions, and who may have graduated or completed study at their institutions several years previous. The impact on schools is twofold; both a drain on staff resources and misdirected anger of alumni towards their alma mater.

**SEVIS Validation Project**

On September 29, 2006, SEVIS users were taken by surprise by an email sent from SEVP, alerting them to the initiation of a new validation exercise, in which some percentage of schools were to be selected. Selected schools were sent an Excel spreadsheet, containing the Name, SEVIS ID and Date of Birth of international students connected to their institution, and were told to check one of three boxes for each student. The choices were: Student has enrolled at school; Student has previously enrolled at school but is no longer enrolled; Student has not enrolled at this school as of this date. Responses were due within 10 business days (the regulatory authority cited by SEVP was 8 CFR 214.3 (g)). In response to concerns expressed by NAFSA: Association of International Educators, on behalf of the SEVIS user community, SEVP responded that they had been told to initiate the exercise by other authorities within DHS. The request came at a difficult time for schools, at the beginning of a term, and many felt unprepared to respond. Many school officials expressed frustration that as this was data that they had already provided to SEVIS as a part of their regulatory reporting requirements, the request was unnecessarily burdensome. Many schools also found the method of sampling, via an email attachment containing sensitive personal data, to be a cause for serious concern. However, despite these concerns, SEVP initiated a second exercise, with another sample group, on November 6th, 2007, and indicated that future requests of a similar nature were not unlikely.

For those with larger student populations, the Validation Project was a reminder of the critical need for an internal database flexible and robust enough to easily issue reports on F-1 student activity, or technical staff capable of extracting such data from more complex institutional data systems.
**F-1 Student Reinstatement and Student Schools Officers**

One of the casualties of the DHS reorganization of Immigration and Naturalization Service functions has been the demise of the Student Schools Officer position in USCIS District Offices. Prior to DHS, it was the INS Student Schools Officer who was responsible for certification and adjudicative updates to approved F and M schools, for providing immigration guidance to school officials, and for adjudicating requests for student reinstatement. However, power to allocate INS staff to serve in this capacity was held at the district level, and was not consistently applied across the country. Many districts permitted one or two individuals to serve in this capacity, but for only a portion of the work week. Others left the role un-staffed or understaffed for long periods of time. Thus, the Student Schools Officer role was one that greatly supported and served international students and schools in districts that adequately staffed the position, while in others, student reinstatements and school approval and update adjudications were nearly impossible. With the advent of SEVIS, certification and adjudicative updates to approved F and M schools moved to SEVP, leaving Student Schools Officers with student reinstatement only. Some USCIS Districts further reduced their support for this role, making reinstatement processing a significant problem in many areas of the country.

Accordingly, SEVP and USCIS recognized the need for support and standardization of student reinstatement processing, and thus, beginning on October 30, 2006, student reinstatements were to be filed locally, but processed at a USCIS service center; California or Vermont, depending on state of residence. However, at a November 2006 NAFSA: Association of International Educators meeting, the Vermont Service Center indicated that they were still awaiting instruction on how to adjudicate F or M reinstatements. While this will change, and student reinstatement will eventually become more standardized across the US, in the short run, difficulties resulting from the inevitable learning curve of new adjudicators are likely, and many schools will feel the loss of a personal school contact, the Student Schools Officer, in their local USCIS District Offices.
**J Exchange Visitor Program 5-year Rule**

On May 19, 2005 DOS published a final rule on changes to the Exchange Visitor regulations affecting J Professor and Research Scholar categories. The rule specified that changes would be implemented on “the date upon which the Department of Homeland Security publishes a notice in the Federal Register announcing that it has completed the technical computer updates to its electronic Student and Exchange Visitor System (SEVIS) that are necessary to implement the rule. While no Federal Register notice was issued by DHS, on November 17, 2006, SEVIS 5.4 was implemented, containing upgraded functionality for the 2005 final rule changes. There were two major components to the rule change: an extension of the maximum period of time allowed for a professor or research scholar program, from 3 years to 5 years; and a new 24-month bar on repeat participation in the J professor or research scholar categories.

The latter provision, as implemented in SEVIS, is a cause for significant concern in the academic exchange program community for DOS EVP has made it clear that the 24-month bar is effective for any professor or research scholar whose SEVIS record becomes inactive (any time on or after November 18, 2006) whether or not they have completed a five year program. For example, the J researcher who comes to the US annually to study bird migrations would be ineligible to return to the US as a J professor or research scholar for two years from the closure of the previous SEVIS record, even if his or her annual visit lasted no more than a few months of each year. This means that exchange program officers must determine whether it is likely that a professor or research scholar’s programs will be on-going, and if so, must keep the SEVIS record active, even if the visitor is returning home for significant periods of time. Keeping the SEVIS record active preserves the visitor’s ability to access the full five years of eligibility, but as with F student study abroad and transfer concerns, this requires that school or exchange program officials provide SEVIS with artificial data, such as a current US address; data that does not accurately reflect the exchange visitor’s actual physical. Alternatively, those designated for use of the J category for J short-term visitor, may make use of this category for some exchange visitors, but only for those who will be visiting their institution for six months or less.
Implementation of the 24-month bar on repeat participation, in this manner, runs counter to the very heart of the State Department’s ideal of educational exchange as a principle tool of diplomacy.

J Exchange Visitor Intern Category

On April 7, 2006, DOS published a proposed rule that would tighten the rule for the already existing J Trainee category, and create a new and long-awaited Intern sub-category. The creation of a new J category for Interns had been an item of discussion with DOS EVP and international education associations for many years, due to the increasing number of students engaged in degree programs overseas and wishing to complete educational internships at US institutions. As drafted, the proposed rule would place the Intern category within the highly restrictive Trainee category. Few educational institutions are designated as sponsors for the Trainee category. More troubling, the rule would limit eligibility to “foreign college or university level graduates” who wished to engage in a “structured and guided work period of work based learning,” thus making the category useless for the vast majority of foreign interns, who seek internship opportunities as a part of their academic degree program, prior to graduation.

This proposed rule represented a failure of the DOS Exchange Visitor Program Office to understand the variety and complexity of internship models, to understand the educational and cultural benefits that short-term interns bring to the US. Additionally, as much of diplomacy at the visa level is based on reciprocity, this restrictive J Intern rule could threaten US students’ opportunities to study abroad, further limiting the potential for what Secretary Rice calls “transformational diplomacy.” A final Intern rule has not yet been published.

Visa and Adjudication delays

There have been fewer problems with long waits to obtain US visas or cases that languish in service centers awaiting adjudication. However, with the growth of data in the USCIS and Department of State name check systems (IBIS, Interagency Border Inspection System and CLASS, Consular Lookout and Support System), those that do experience delays are more often those with common names; names that match or closely
resemble the name of someone with a known or suspected history in these systems. In the years following September 11, 2001, the number of names in these databases has grown, as agencies have developed more efficient ways to share data. Consequentially, the number of cases impacted by name check “hits” has increased. For example, a lecturer in Classics with the name Jose Garcia is likely to experience a delay in both USICS adjudications, and in visa applications, simply because of the commonality of his name. However, there is no way to predict the likelihood that an individual will be affected, and if impacted, there is no way to provide viable estimates for clearance.

The House Science Committee has held hearings on the visa delay issue for several years, and due to increases in Department of State staffing and better technology, there have been significant improvements in visa clearances for those involved in sensitive areas of research. However, the system for verifying that a visa applicant is not the same individual as one, or many, others listed in the name check system is still slow, whether in the context of a visa application, or a petition for a visa benefit at a USCIS Service Center.

**Living, Driving and Taxes**

Probably the single largest issue for international educators today relates to the difficulties that our international students and scholars are experiencing in the ordinary business of life in our communities. More and more visitors and their dependents experience problems with obtaining driver’s licenses, impacting their ability to get to work, buy groceries and take their children to day care. The Social Security Administration has made it more difficult for students to obtain an SSN, making it difficult for visitors to obtain cell phones, open bank accounts or fill in on-line job applications. Simultaneously, the IRS tightened up the method and procedures for obtaining individual tax payer ID’s. While the agencies involved are implementing changes in accordance with their own missions, the net effect is to make the business of living, working and paying taxes more and more challenging. It is hard for international students and exchange visitors to feel at home and welcome in our communities when they can’t extend their driver’s license, or businesses refuse service because they don’t have a US Social Security Number. To some, these bureaucratic restrictions have made
the US seem like a hostile environment, a situation clearly detracting from the administration’s stated foreign policy goals.

The Future?

In the years following September, 2001, a number of countries, including Canada, Australia and the UK, began aggressive and coordinated national campaigns to attract the international students that the US was losing due to the overwhelming assortment of restrictive regulatory and policy changes implemented by US agencies in the name of national security. The loss of educational exchange as an agent of diplomacy and cultural understanding would be immeasurable. The US is a leader in research and technology, and has held a leading role in the educating our world’s leaders. Our economy benefits significantly from the contributions of international visitors and their families (approximately $13.49 billion dollars in 2006). While there are some positive signs that international enrollments increased slightly or held steady in 2006, it is clear that if we are to remain attractive as a destination for international students and scholars, we must find ways to balance the need for national security with policies, technical systems and practice that recognize the value of international education. We have to have a more coordinated and cohesive international education policy. The rhetoric must reach the ground.
Notes and Resources:

1. For purposes of this paper, I will use the term “scholar” to refer to J Exchange Visitors, engaged in teaching, research or short-term scholar programs in the US. While many of the issues raised also affect international scholars in other visa classifications, this paper is limited those in F or M (academic or vocational) student visa status, or J (professor, research scholar, or short-term scholar) exchange visitor status.


4. NAFSA: Association of International Educators and NAFSA Adviser’s Manual of Federal Regulations Affecting Foreign Students and Scholars are the single greatest resources available for those working directing with international students and scholars on college and university campuses. (http://www.nafsa.org)

5. SEVP website: http://www.ice.gov/sevis/index.htm


7. For a comprehensive list of world leaders educated in the United States, please refer to the U.S. Department of State’s on-line resource: “Foreign Students Yesterday: World Leaders Today” at http://exchanges.state.gov/education/educationusa/leaders.htm
