

RECENT LEGISLATIVE AND REGULATORY CHANGES AFFECTING FOREIGN STUDENTS AND SCHOLARS

By Sylvia H. Kless
Associate Director for Student Services
Senior International Student Advisor
University of Rochester

Following the first World Trade Center attack in 1993 when one foreign student was found to be involved, Congress mandated a tracking system for foreign students. Due to concern over the status of terrorists involved on September 11, 2001, the tracking system along with many other legislative, regulatory and policy changes were implemented at an unprecedented pace by the Department of State (DOS), Department of Justice (DOJ), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS) whose duties were taken over by the newly-formed Department of Homeland Security (DHS). Each of these changes (*some* of which are briefly outlined below) have had to be quickly interpreted by the institution's international office staff and relayed to both the foreign nationals affected and to the institution's administration, often requiring immediate changes to internal policies and procedures.

It is also important to remember that immigration officials at the three new Bureaus of the Department of Homeland Security staffing the U.S. ports of entry, regional immigration service centers and the district immigration offices, as well as, visa officers at U.S. consulates and embassies abroad have also had the challenging job of trying to keep up with these rapid changes and of quickly developing appropriate procedures and instructions for all involved.

09/30/1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

Mandated government tracking of international students passed by Congress in response to the first World Trade Center Attack in 1993

10/25/2001 USA Patriot Act

Amended IIRIRA to require full implementation of foreign student tracking by 1/1/2003

03/7/2002 Documentation of Non-immigrants Under the INA, Automatic Visa Revalidation (Interim Final Rule) DOS

Reentry to U.S. from Canada or Mexico requires valid visa for nationals of state sponsors of terrorism

04/12/2002 Interim Final Rule INS

Visitors to U.S. cannot attend school without changing to student status

05/07/2002 Presidential Directive, Interagency Panel for Advanced Science and Security (IPASS)

Proposal to scrutinize applicants for student and exchange visitor visas who want to study or conduct research in certain sensitive science and technology fields that are “uniquely available” in the U.S.

05/14/2002 “Border Security Act” Legislation Enhanced Border Security and Visa Entry Reform Act

Restricts issuance of visas; visa applicants must provide background information; institution is notified of visa issuance; requires notification of failure to enroll (no shows)

05/16/2002 Student and Exchange Visitor Information System (SEVIS) (Proposed Rule) INS

Regulations regarding implementation and operation of SEVIS, a computerized Internet tracking system; many significant changes and new restriction affecting students and scholars

06/06/2002 Homeland Security Act (Presidential Proposal)

Proposed development of new Cabinet-level Department of Homeland Security to include the “legacy” INS

06/26/2002 Initiatives to Strengthen the Integrity of the Social Security Number (Policy Change) SSA

Social Security numbers will no longer be issued for ID purposes (applying for a driver’s license); documents of non-immigrants must be verified with INS before SSN will be issued causing delays and hardships especially for those students needing to begin work on campus

07/01/2002 Allows Eligible Schools to Apply for Preliminary Enrollment in SEVIS (Interim Final Rule) INS

Establishes criteria for SEVIS certification fees; mandates DHS on-site campus visits to determine compliance with record keeping and reporting requirements, etc.

08/12/2002 Registration and Monitoring of Certain Nonimmigrants (Final Rule) DOJ

Special registration requirements for nationals of Iran, Iraq, Libya, Cuba, N. Korea and Sudan

08/27/2002 Reduced Course Load for Certain F and M Nonimmigrant Students in Border Communities (Interim Final Rule) INS

Clarifies rules for part-time border commuter students from Canada and Mexico living within 75 miles of U.S. border

09/06/2002 Registration and Monitoring of Certain Nonimmigrants from Designated Countries (Notice) DOJ

Officially designates Iran, Iraq, Libya, Sudan and Syria as countries whose nationals are subject to special registration (“NSEERS”), upon arrival in U.S. Requires 30 day and annual in person registration

09/18/2002 Transitional Foreign Student Monitoring Program (ISEAS) (Interim Final Rule) DOS

Consulates must receive separate electronic notification by educational institution that visa applicant has been accepted

09/25/2002 Certification of All Service approved Schools for Enrollment in SEVIS (Interim Final Rule) INS

Instructions on certification and fees required to be approved for attendance of F and M students

11/06/2002 Registration of Certain Nonimmigrant Aliens from Designated Countries (Notice) DOJ

Subjects individuals from certain countries already in the U.S. to NSEERS special registration procedures

11/22/2002 Registration of Certain Nonimmigrant Aliens (Notice)

Added nationals from Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen to the NSEERS reporting

11/25/2002 Homeland Security Act (Legislation) DOJ

Department of Homeland Security created; many shifts in policy and practice as takeover of the Immigration and Naturalization Service (legacy INS) begins

12/11/2002 SEVIS (Final Rule) INS

Established regulations regarding the implementation of SEVIS, computerized tracking for F, M and J non-immigrants, effective 1/1/03

12/12/2002 Exchange Visitor Program SEVIS Regulations (Interim Final Rule) DOS

Established SEVIS regulations and procedures for the J program, effective immediately

12/16/2002 Special Registration (Notice) DOJ

Addition of nationals of Pakistan and Saudi Arabia to NSEERS list

01/16/2003 Special Registration (Notice) DOJ

Addition of nationals of Bangladesh, Egypt, Indonesia, Jordan and Kuwait to NSEERS list

01/31/2003 Removal of Visa and Passport Waiver (Interim Final Rule) INS

Citizens of commonwealth countries who reside in Canada or Bermuda are no longer eligible to waive visa and passport requirements

05/21/2003 Border Security Waiver of Personal Appearance (Cable to Consulates) DOS

Consular offices are now required to interview all nonimmigrant visa applicants

08/11/2003 Reduced Course Load Requirements (Final rule) DHS

Border commuter rule allows part-time study for certain citizens of Canada and Mexico

10/27/2003 Authorized Collection of a Fee ((Proposed Rule) DHS

Proposed a SEVIS fee of \$100 to be collected before students and scholars apply for a visa to cover expenses of SEVIS

12/02/2003 Suspends the 30-day and Annual Interview from NSEERS (Interim Final Rule) DHS

DHS exempts non-immigrants from certain countries from NSEERS 30 day and annual reporting, however, they must still leave through designated ports of departure

12/16/2003 Evidence Requirement for Assignment of Social Security Numbers to Foreign Students in F-1 Status (Proposed Rule)

Requires proof of employment before SSN would be issued (problematic for many university payroll systems)

01/05/2004 US-VISIT DHS

DHS begins fingerprinting and photographing visitors to the U.S.

3/4/2004 Cable to Consulates, Subject: The Challenging Work of Student Visas DOS

Encourages students to apply for visas early, a personal appearance is required, emphasizes importance of student visas in U.S. foreign policy

4/15/2004 Adjustment of Immigration Benefit Application Fee Schedule (Final Rule) DHS

Revised fee structure for immigration benefits adding an average of \$55 to applications

06/23/2004 Discontinuance of Reissuance of Certain Visas in the U.S. (Notice) DOS

DOS announces discontinuance of certain domestic visa issuance

07/01/2004 SEVIS Fee (Final Rule) DHS

DHS levies \$100 fee for F-1 and most J-1 visa applicants to cover cost of SEVIS monitoring program

07/23/2004 Extension of status for Certain F and J Nonimmigrants subject to H-1B cap (Notice) DHS

DHS extends status of certain F and J students whose employers filed timely H-1B petitions

09/13/2004 Evidence Requirements for Assignment of Social Security Numbers to F-1 Students (Final Rule) SSA

After 10/13/2004, F-1 students must have proof of on campus employment to be eligible for a U.S. Social Security Number

12/08/2004 Consolidated Appropriations Act (Legislation)

New fraud prevention and detection fee of \$500 for all employers for each new H-1B temporary worker petitions filed and 20,000 foreign nationals with master or higher-level degrees from U.S. universities will be exempt from the H-1B cap each year

12/17/2004 Intelligence Reform and Terrorism Prevention Act of 2004 (Legislation)

Writes into law the provisions of a 2003 DOS cable requiring in-person interviews for almost all applicants for nonimmigrant visas

12/27/2004 Labor Certification for the Permanent Employment of Aliens in the U.S. (Final Rule) DOL

Implements the Program Electronic Review Management (PERM) program, a revamped labor certification process

04/05/2005 Western Hemisphere Travel Initiative (Based on 9/11 Intelligence Bill) DOS and DHS

Will require all U.S. citizens, Canadians, citizens of the British Overseas Territory of Bermuda and citizens of Mexico to have a passport or other accepted secure document to enter or re-enter the U.S. by January 1, 2008

05/09/2005 Implementation of H-1B Visa Reform Act of 2004 (Legislation)

USCIS makes available 20,000 new H-1B visas for foreign workers with a minimum master's level degree from a U.S. institution in addition to the 65,000 Congressionally mandated annual cap

5/11/2005 REAL ID Act (Legislation)

Sets new requirements for state-issued driver's licenses and ID cards, with verification of immigration status required through SAVE and a new E-3 category for Australian workers

05/16/2005 Annual Student Visa Update (Cable) DOS

Reminder to consular posts of importance of timely processing of student and exchange visitor visas and other guidance including possibility of errors in SEVIS system

05/19/2005 Participation in the Exchange Visitor Program as Professor or Research Scholar (Final Rule) DOS

Extends maximum duration of program participation for F-1 Professors and Research Scholars from three years to five years

06/15/2005 U.S. Extends Visa Validity for Chinese Students and Exchange Visitors (Policy Statement) DOS

Beginning June 20, 2005 Chinese students and scholars will be issued visas that are valid for 12 months and multiple entries to facilitate educational exchanges between the U.S. and China

06/26/2005 Machine Readable Passports Required for all Visa Waiver Program Travel (Legislation) implemented by DHS

As of 06/26/2005 travelers from 27 Visa Waiver Program countries must have a machine-readable passport to enter the U.S. without a visa

07/18/2005 New Criteria for Visa Interviews (Cable) DOS

All non-immigrant visa applicants ages 14-79 must be personally interviewed; new age requirements match the requirements for biometrics already in place

09/07/2005 Giving Priority Appointments to Family/NOK of Victims of Hurricane Katrina and Information for Students in Affected Areas (Cable) DOS

Instructions for visa applicants searching for loved ones in hurricane areas and for foreign students attending affected schools

09/28/2005 Students and Immigrant Intent (Cable) DOS

New guidance for consular officers on how to interpret the immigrant intent provisions when adjudicating student visa applications. Focus should be on the applicant's immediate and near-term intent. Course of study should not be deemed a negative factor and community college and ESL programs must be accorded the same consideration as other schools

10/26/2005 USCIS Filing Fee Increase (Regulation) USCIS

USCIS announced an increase in application filing fees from \$5 to \$20 due to inflation

11/25/2005 Interim Relief for Foreign Students Impacted by Hurricane Katrina (Rule Suspension) USCIS

Short-term employment authorization and reduced course load for certain F-1 nonimmigrant students adversely affected by Hurricane Katrina until 2/1/2006

