

New Strategies for the New Year

A Review of Immigration Policy and Strategy Discussion

Presenters

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Topics for Discussion

- History of Policy Initiatives
- Anticipated Policy Changes
- Effects on Student Immigration
- Effects on Employment Based Immigration





Top 5 Strategies for the Coming Year: DREAM

- **1. Do** form a strategy and protocol on immigration for your college - from ISSS office to student advisors, the scholars' departments on what you can and cannot advise. Do you only advise on F-1, J-1 and visas for scholars, staff? Do you have a system of handling emergencies? Have you audited your immigration files for compliance? Do you have regular training for your team handling immigration?
- **2. Reinforce.** Talk to your international students and staff about maintenance of status. Update CPT/OPT/STEM trainings to reinforce types of scrutiny these programs are receiving and the types of activities that are problematic – non-compliance with training plans; fraudulent OPT employment; misuse of CPT.
- **3. Empathize.** This is a challenging time for international students who are on alert for changes in immigration- make time to listen to the needs of your immigrant students and scholars.
- **4. Adjust** to the current administration, the need for more work on cases. Time spent on cases may take more time and effort. Do you have enough staff? Do you have website resources for students and staff to answer common questions?
- **5. Make** contacts at GAIE and NAFSA to stay connected and share guidance and resources. Identify the resources available for your team both internally and externally. Read the updates from NAFSA and become familiar with immigration laws and news that may impact your students and scholars. Have a list of outside immigration legal counsel to refer- business immigration, family immigration, DACA, asylum/deportation.

Where did this start?

Buy American Hire American Executive Order

- Executive Order signed in April of 2017 which seeks to create hire higher wages and employment rates for U.S. workers and to protect economic interests by rigorously enforcing and administering immigration laws.
- Pipeline of new policy and enforcement initiatives since signing.



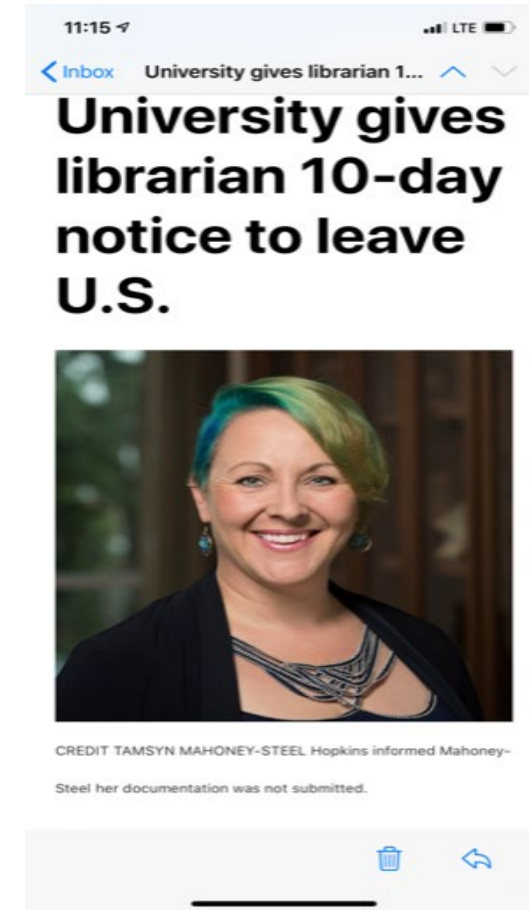
Formal Policy Changes

■ October 23, 2017

- *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* (USCIS PM-602-0151)
 - Requires adjudicating officers to thoroughly review petition and supporting evidence, even where an application is an extension without change.
 - Petitioner must prove case with each filing.
- **How has this changed your practices and strategy for employment based cases?**

Effects of No More Deference

- Consequences to no more deference.



Formal Policy Changes

- June 28, 2018
 - *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear(NTAs) in cases Involving Inadmissible and Deportable Aliens (USCIS PM-602-0050.0)*
 - Exposes employment based immigrants to deportation consequences.
 - Allows USCIS to issue Notices to Appear to those whose application for a immigration benefit is denied and whose underlying status has expired.
 - Increases risk that any criminal act, arrest, or conviction could subject a foreign national to removal proceedings, even if not the basis for petition denial.
 - **Implementation temporarily suspended pending USCIS/ICE updates to operational guidance.**

Formal Policy Changes

- Inadmissibility on Public Charge Grounds, to be implemented beginning February 24, 2020 (injunction lifted by U.S. Supreme Court on January 27, 2020)
 - Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (Green Card) is inadmissible if the individual, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."
- Requires extensive new form and documentation of assets, credit report, etc.
- At a minimum, a U.S. Citizenship and Immigration Services (USCIS) officer must consider the following factors when making a public charge determination:
 - Age
 - Health
 - Family status
 - Assets
 - Resources
 - Financial status
 - Education and skills



Other changes....

- H-1B third-party Placement policy and STEM OPT third-party placement restrictions
- H-1B Regulatory changes, including “pre-registration process.”
 - Pre-register for an H-1B number beginning March 1.
 - Lottery process reversed to give Masters degree students greater opportunity for selection

Formal Policy Changes

■ August 9, 2018

- *Accrual of Unlawful Presence and F, J, M Nonimmigrants* (USCIS PM-602-1060.1)
 - Effective immediately, USCIS will now start counting days of unlawful presence for F, J, and M students the day after a status violation occurs, unless the student applies for reinstatement or the student or exchange visitor is covered by some other exception. Replaces former policy for F, J, & M students that required a formal determination of status violation by a USCIS official or immigration judge.
 - Examples of status violation:
 - » Withdraw from academic program
 - » Failure to maintain full-time coursework
 - » Remaining in U.S. after 60 day grace period if no change of status/extension pending.



Maintenance of Status and F-1/J-1

- Target for USCIS
 - Specifically focused on use of CPT
 - Maintenance of STEM training plans
- How have you seen this affect your cases?
 - Change of Status Denied
 - Increase in RFEs
 - Questioning at Consulate/POE

F-1/J-1 Maintenance of Status

The record does not contain any evidence regarding the STEM training program and whether the STEM employer is providing the STEM training that is specified on the Form I-983, Training Plan for STEM OPT Students. Moreover, since it appears that the beneficiary is not working at the STEM employer's location, the record does not show how the STEM employer's employees are providing the required STEM training to the beneficiary.

- STEM/OPT
- Maintenance of Full Course load
- Accredited Degree Program
- Academic Misconduct

Use of CPT

Issue

The initial evidence indicated that the beneficiary attended the Hult International Business School and was granted optional practical training while the beneficiary was completing her Master's degree, which was valid from May 5, 2018 to April 17, 2019.

Evidence indicates that the beneficiary is also attending Campbellsville University and was granted curricular practical training while the beneficiary is completing her subsequent master's degree, which is valid from May 6, 2019 to September 17, 2019.

Title 8 of the Code of Federal Regulations (CFR), section 214.2(f) states the following regarding practical training:

(10) Practical training. Practical training may be authorized to an F-1 student who has been enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for one full academic year. This provision also includes students who, during their course of study, enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad.

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1 of 3

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A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible student may request employment authorization for practical training in a position that is directly related to his or her major area of study.

Decision

The record does not establish that the beneficiary was engaged in practical training for a term set by regulations. Therefore, the record indicates the beneficiary participated in practical training for a period longer than allowed by regulation.

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2 of 3

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The record does not demonstrate the beneficiary was engaged in valid curricular practical training while attending Campbellsville University. Accordingly, the beneficiary's change of status is denied pursuant to 8 CFR 214.1(c)(5).

Fraud Findings at Pre-Clearance/POE

Q. Did you pay for the employment letter to [REDACTED] Inc?
A. Yes, one hundred dollars

Q. Were you under any contract to work for [REDACTED] Inc?
A. No

Q. Was it a fraudulent letter?
A. Yes

Q. Where did you use employment offer from [REDACTED] Inc?
A. I gave it to the University

Q. Why did you do it?
A. All my friends scared me by saying I wouldn't get a job in ninety days due to the lack of prior experience.

Q. Were you aware that by submitting fraudulent employment letter to the university in order to gain immigration benefit is considered fraud?
A. I didn't think about it

Q. Were you aware that you in violation of your student status due to not being employment past 90 days after your school end date and instead indicating to the school that you are currently employed with [REDACTED] Inc?
A. Yes

Q. You have been found inadmissible pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. Do you understand?
A. Yes.

Q. You have been found inadmissible pursuant to Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act. Do you understand?
A. Yes

Q. Your current F1 visa will be cancelled and will no longer be valid for entry into the United States. You must obtain a different U.S. immigrant, non-immigrant or some other entry document for any subsequent trips to the U.S., do you understand?
A. Yes.

Q. Do you understand that you will be returned back to your country of residence?
A. Yes.

What is in the pipeline?

- H-1B definition of specialty occupation expected to be narrowed and clarified.
- H-4 EAD Revocation
 - Currently with OMB. Latest projections are action in Spring of 2020.
- Fairness for High-Skilled Immigrants Act of 2019, H.R. 1044
 - Sponsors: Rep. Zoe Lofgren (D-CA) and 116 co-sponsors
 - Eliminates the per-country numerical limitation for employment-based immigrants and increases the per-country numerical limitation for family-sponsored immigrants from 7 percent to 15 percent
 - Passed the House 365 to 65 on July 10, 2019
 - Companion bill: S. 386, which includes additional H-1B compliance and enforcement provisions, currently on hold in the Senate



Student and Exchange Visitors

- Immigration and Customs Enforcement (“ICE”) has stated its intent to eliminate the use of “Duration of Status” for certain nonimmigrant visa holders – and, in particular, F-1 Students and J-1 Visitors.
- Continued focus on maintenance of status and compliance.
- Expected overhaul of practical training rules for F-1 students.

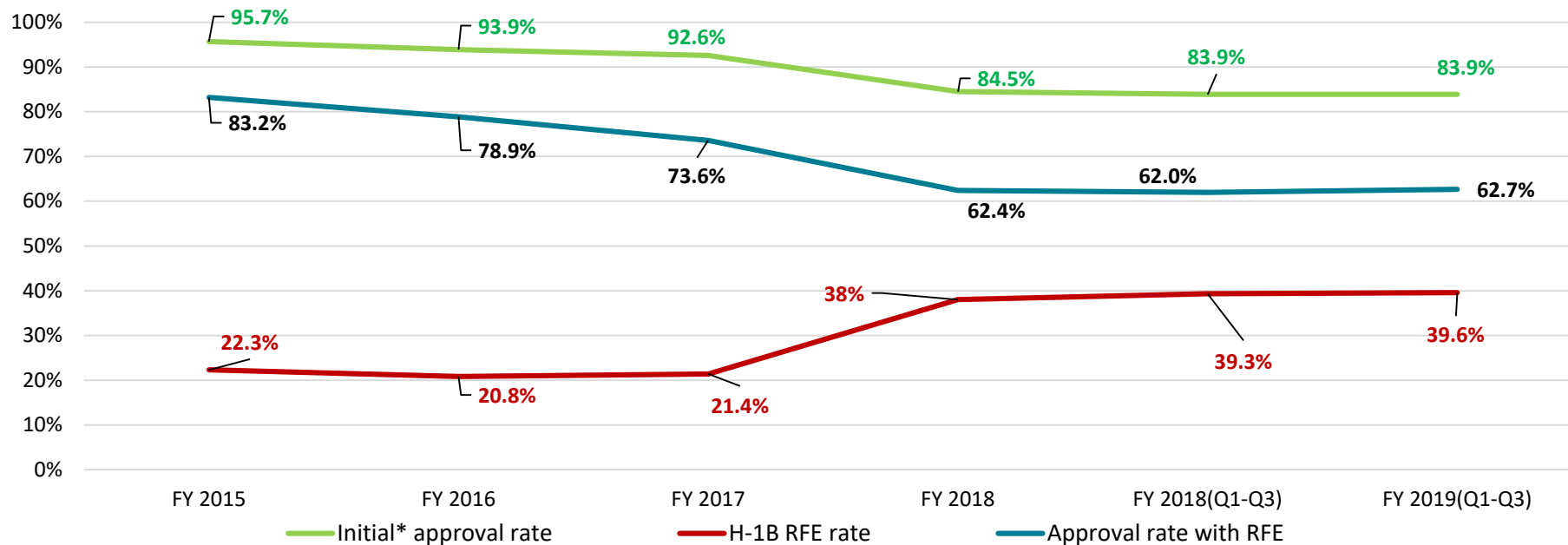


Effects on Student Immigration

- International undergraduates in U.S. schools totaled about 431,900 in the 2018-2019 academic year, down more than 10,000. That ended 12 straight years of growth. - *Institute of International Education*
- The study also found that international graduate enrollment was down in 2018-2019 for the second consecutive year, to about 377,900. That total is 3.3 percent lower than a recent peak in the 2016-2017 school year.
- Perception that a student visa is harder to get? Is this reality?

Effects on Employment Immigration

- Significant Increase in RFEs and Denials**
H-1B RFE and Approval Rates





RFE Trends

- Level One Wage
- H-1B not supported by LCA
- Salary Survey
- F-1/J-1 and OPT/STEM Status Compliance
- Doing Business
- Specialty Occupation
- “Kitchen Sink”
- Multiple RFE’s

Wage and LCA RFE's

The DOL Policy Guidance further states:

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in the O*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker.

USCIS follows the DOL guidance, and the process set forth in the DOL Policy Guidance, to determine whether the wage level in the certified LCA submitted in support of the petition properly corresponds to the proffered position.

By designating the proffered position at a Level I wage, you indicate that the proffered position is a position of a comparatively low level relative to other positions within the occupation.

The description of the proffered position and supporting documentation provided with your initial filing are insufficient to establish that the proffered position should be assigned a Level I wage. Further evidence which lists the tasks, knowledge, and skills of the proffered position along with the experience and education required for the proffered position is necessary to establish that the petition is supported by a certified LCA that corresponds to the petition.

Wage and LCA RFE's

LCA and Proffered Position: You must establish that your petition is supported by an ETA Form 9035(E), Labor Condition Application (LCA), which corresponds with the proffered position described in the petition.

You indicated on Page 3, Section G, Item a.8 of the LCA that the wage level of the proffered position is "N/A" or not applicable. You also indicated on Item a.11b that you utilized a wage survey named Association of American Medical Colleges ("AAMC") Survey of Resident/Fellow Stipends and Benefits to determine the prevailing wage of the occupation in the area of employment. This survey is publicly available on AAMC's website at <https://www.aamc.org/data/stipend/>. A review of the AAMC survey indicates that you utilized prevailing wages from the 2016 report, which is the most recent report.

At issue is whether the petition is supported by an LCA that contains the prevailing wage for the occupation in the area of employment.

Travel Ban Updates

- Expanded as of January 31, 2020
 - Original Countries: Iran, Libya, North Korea, Syria, Venezuela, Yemen, Somalia (see table next slide)
 - New Countries: Eritrea, Kyrgyzstan, Nigeria, and Myanmar: The entry into the United States of nationals as immigrants, except as Special Immigrants whose eligibility is based on having provided assistance to the United States Government, is hereby suspended.
 - New Countries: Sudan and Tanzania: The entry into the United States of nationals of Sudan as Diversity Immigrants, as described in section 203(c) of the INA, 8 U.S.C. 1153(c), is hereby suspended.

Prior Travel Ban Countries

Country	
Iran	<p>Entry as an immigrant is suspended</p> <p>Entry of Iranian nationals "under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements."</p> <p>Entry under other types of nonimmigrant visas is suspended</p>
Libya	<p>Entry as an immigrant is suspended</p> <p>Entry is suspended for nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas.</p> <p>Entry under other types of nonimmigrant visas is not suspended</p>
North Korea	<p>Entry as an immigrant is suspended</p> <p>Entry is suspended for all nonimmigrant visa categories</p>
Syria	<p>Entry as an immigrant is suspended</p> <p>Entry is suspended for all nonimmigrant visa categories</p>
Yemen	<p>Entry as an immigrant is suspended</p> <p>Entry is suspended for nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas</p> <p>Entry under other types of nonimmigrant visas is not suspended</p>
Venezuela	<p>Entry is suspended for Venezuelan nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, but only for officials of government agencies of Venezuela involved in screening and vetting procedures and their immediate family members.</p> <p>Nationals of Venezuela not subject to the above suspension should nevertheless "be subject to appropriate additional measures to ensure traveler information remains current."</p>

Compliance and Enforcement

- Surge in ICE I-9 investigations
 - 5200 worksite audits from January to July 2018 – three times the number conducted in all of FY 2017
- Marked increase in DOL audits of H-1B wage rules and related back wage awards
- USCIS Fraud Detection and National Security (FDNS) worksite inspections increase, with new focus on H-1B third-party placements, L-1A and L-1B employment
- STEM OPT site inspections program began in July 2019, after a 3-year delay
- Justice Department increases investigations of immigration-related discrimination claims
 - May 2018 MOU between USCIS and DOJ establishes partnerships on “detection and elimination of fraud, abuse and discrimination against U.S. workers by employers hiring foreign nationals in the United States”
- Social Security Administration resumed issuing SSN mismatch letters in Spring 2019

Expected Fee Increases

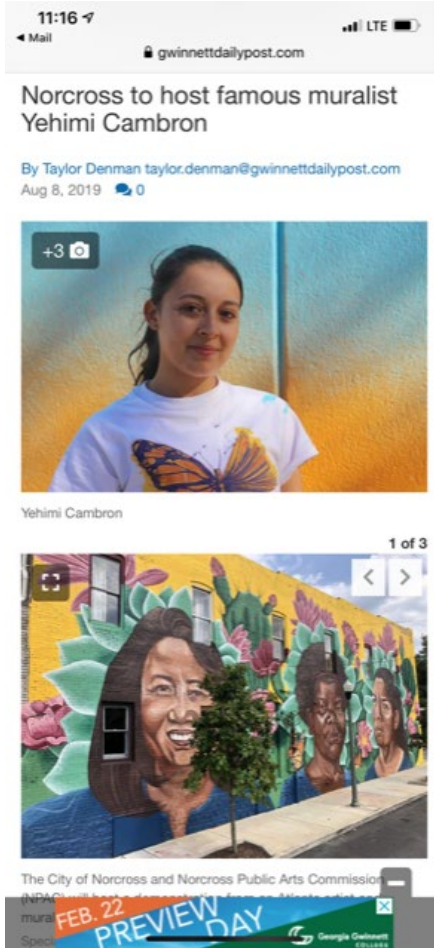
Form #	Form Title	Current Fee	Proposed Fee	% Change
I-129	H-1B	\$460	\$560	22%
	O-1		\$715	55%
	E and TN		\$705	53%
	L		\$815	77%
I-131	Application for advance parole travel document	\$575	\$585	2%
I-140	Immigrant Petition for Alien Worker	\$700	\$545	-22%
I-290B	Notice of Appeal or Motion to Reopen	\$675	\$705	4%
I-485	Adjustment of Status	\$1140	\$1120	-2%
I-539	Application to Extend/Change Nonimmigrant Status	\$370	\$400	8%
I-765	Application for Employment Authorization	\$410	\$490	20%



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Yehimi Cambron




Yehimi Cambron:

- Teacher
- Artist
- Immigration Advocate
- Graduate of Agnes Scott
- Undocumented

Questions/Discussion





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