BIO International Student Immigration Updates

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Session Outline

• **New Policies**
  – Unlawful Presence
  – Notice to Appear Policy Memo
  – RFE/NOID Policy
  – Public Charge Ground of Inadmissibility
  – Third Party Placements (STEM OPT)
  – Bridge Applications
  – Looking Ahead: Regulatory Agenda
  – Fee increases

• **Trends**
  – RFEs (OPT, CPT, STEM, H1Bs)
  – Form I-765 Updates
  – H1-B premium processing issues

• **BIO Form updates**
  – F-1 Curricular Practical Training (CPT)
  – J-1 Academic Training (AT)
Policy Updates & Trends
USCIS: Unlawful Presence Policy

• Background:
  – New method of counting days of unlawful presence
  – In effect from August 9, 2018
• Why is this significant?
  – Prior policy: days of unlawful presence began accruing after USCIS official or immigration judge made a formal finding of a status violation
  – New policy: days of unlawful presence begins accruing the day after a status violation occurs
  – Days of unlawful presence is used to determine how long a student is subject to a bar on re-entry into the US.

Unlawful Presence Accrual
+180 days = 3 year bar on re-entry
356 days or more = 10 year bar
USCIS: Unlawful Presence Policy

• What does this new policy mean for UCB, advisors and students?
  – Errors in advising, BIO immigration reporting, database management have greatly increased impact on students
  – Seemingly small violations can have a big consequence, even years down the road
  – Academic advisors, faculty, and staff need to be mindful to refer international student to BIO for ANY issues impacting full-time enrollment, employment, etc

• What is BIO doing?
  – BIO is working with UC, campus counsel, and other national groups on advocacy and best practice
  – Increased BIO advisor training and immigration focus, increased database monitoring
  – Increased student communications and outreach regarding status maintenance (ULP email and tips to maintain status campaign)
  – Website, new student material updates
Top 10 ways to Maintain F-1/J-1 Status

1. Keep Local U.S. address up-to-date in Cal central & BIO post-completion reporting systems
3. Get BIO approval before a reduction in course load or withdrawal.
4. Avoid violating the UC Berkeley Code of Student Conduct or U.S. laws.
5. Students should attend the school noted on their I-20 (F-1s) or DS-2019 (J-1s).
6. Keep I-20 or DS-2019 valid at all times and understand the completion date.
   • Apply for extensions BEFORE expiration.
   • Completion = final semester of enrollment. Summer completion generally requires enrollment. Grads MUST check with BIO re: Summer completion!
7. Get proper travel endorsement and understand travel documents.
8. Understand grace periods after completion & options. (F-1s: 60 days. J-1s: 30 days)
   • F-1s can depart, apply for transfer or finish applying for OPT during grace period
   • J-1s can only depart. Transfer or AT requests must come before completion!
   • F-1: On campus automatic during program/I-20. Off-campus requires CPT or OPT.
   • J-1: On-Campus must be authorized! Off-campus requires AT.
10. J-1 students & dependents must maintain proper health insurance before & after completion
What does this look like for students?

• F-1 accepts job offer internship, starts working on 10/1 before applying for CPT. They receive CPT authorization starting 10/25.
  – Days of ULP begin counting as of 10/1.
  – Options- travel? Consult counsel?

• J-1 GSI has been working on campus since Summer 2018 without J-1 employment authorization, starting 5/15/18.
  – Days of ULP have been counting since 8/9
  – Options- If discovered, BIO can request a record correction

• F-1 consults academic advising and is told they can have a 1 time drop below full-time units. Student drops on 9/01 without consulting BIO, record goes undetected.
  – Days of ULP counting from 9/01.
  – BIO runs regular reports to find under-enrolled students. If detected BIO would work on RCL options, if possible. If not, consequences could be severe depending on length of time.

• J-1 is advised that other insurance policies are cheaper than SHIP for spouses, purchases insurance for J-1 spouse that is not compliant with J regs.
  – ULP begins counting from day after compliant insurance expires.
  – Options- travel? Consult counsel?

• F-1 forgets that their I-20 expires on 5/11/2018 and has been ignoring BIO emails. They plan to complete the degree in Spring 2019.
  – Days of ULP have been counting since 8/9. Options- travel? Consult counsel? F-1 reinstatement?
USCIS: Notice to Appear

• Background: New Policy Memo describes the new USCIS policy on when they will issue NTAs
• Cases when an NTA may be issued:
  – Criminal conviction or charge
  – Committed acts that are chargeable
  – Fraud or misrepresentation is substantiated
  – Evidence that the applicant abuses the receipt of public benefits
  – Abuse of public benefits
  – **Applicant will be unlawfully present when the petition or application is denied**
• Why is this significant?
  – Prior policy: USCIS generally left the issuance of NTAs to other agencies (ICE) with a few exceptions
  – New policy: USCIS is now re-asserting its ability to use its discretion to issue NTAs in new situations, specifically with the denial of Forms I-539 (changing visa status, or applying for reinstatement and I-485 (filing for Permanent Residency) OTHER FORMS TO FOLLOW (like I-765 for OPT OPT STEM employment?)
USCIS: RFE/NOID Policy

• Background:
  – Policy change with the stated purpose of discouraging “place holder” filings and allow USCIS to focus more on adjudicating/evaluating applications
  – Adjudicators will have full discretion to issue a denial for frivolous or incomplete filings instead of issuing an RFE or NOID
  – Adjudicators are trained on how to distinguish between an “innocent mistake” and incomplete filing
• Why is this significant?
  – Much higher stakes when filing petitions
• What does this mean?
  – Liabilities when advising on applications such as I-539 (COS & reinstatement) and I-765 (OPT)
  – BIO is reviewing current guidance provided on BIO websites to ensure forms are updated and information is correct
  – Proactive approach when filing applications or advising students who are about file application to include all evidence (Example: Updating CPT course titles, forms, CIP code major name mismatch)
What does this look like for students?

• F-1 applied for OPT post-completion employment. They submit the application more than 30 days after the OPT I-20 is issued. They also forget to sign the I-765 form. No RFE is issued for the missing or incorrect documents. Application is denied more than 60 days after the student’s program completion.
  – Days of ULP start from date of denial. Currently, no NTA

• F-1 student who forgot to extend I-20 has applied for F-1 reinstatement with form I-539 so they can complete the degree. I-20 expired 5/11/2018. Expected graduation is 8/10/2019. Student submits I-539 on 9/09/2018. Application is complex, USCIS denies application on basis of insufficient funding, with no RFE on 3/9/2019.
  – ULP counted from 8/9-9/8, begins counting again from 3/9/19. Student would accrue enough ULP for 3 yr bar by time of graduation
  – If student remains, possible NTA after 33 days
USCIS: Inadmissibility on Public Charge Ground (Proposed)

• Background
  – Proposed rule with the stated purpose of ensuring aliens are self-sufficient and will not rely on public resources to meet their needs. BIO & counsel are STILL REVIEWING. 400+ pages of proposed regs.
  – Applies to anyone seeking admission into the US, requesting Adjustment of Status, or requesting Change/Extension of Status (I-539, I-129)
  – Defines ‘public charge’ as an alien who has received one or more public benefits
  – Defines ‘public benefits’ with a list of cash/noncash aid (SNAP, WIC, Medicaid) and sets a threshold for receiving such benefits before being considered a public charge

• Why is this significant?
  – USCIS (and DOS) will now be looking at the likelihood of an applicant for a visa, change of status or extension to become a “public charge”
  – Schools need to be mindful or which public benefits they are recommending to international students and scholars
  – Advisors may need to update advising and resources
  – Insurance while on OPT or AT, for non citizen dependents (Covered California)
  – SNAP and WIC for students and scholars with families
USCIS: Third Party Placements (24-Month STEM OPT)

• Background:
  – USCIS has updated the information on their website multiple times (but has yet to issue an official policy memo)
• Key Takeaways:
  – New guidance stresses the importance of the “employer-employee” relationship component of STEM OPT
  – Employer is the entity that signs the I-983
  – Employer is the same entity that provides the training to the student
  – A student on STEM cannot train another student on STEM
  – The people providing the training may be contractors of the employer but they cannot be employees or contractors of the employer’s clients/customers
  – Staffing/Temp agencies may employ students as long as they meet criteria above
USCIS: Change of Status Bridge Applications

• Background:
  – If current visa status will expire more than 30 days before the new status begins, change to new status will be denied unless a “bridge application” will be filed to cover the “gap” between the two primary status

• Key Take Aways:
  – Students may be forced to travel to change visa categories to student
  – Denials can result in NTA
  – Common with current students aging out of other categories (i.e. H-4 turns 21)

• Example issue: H-4 Junior turns 21 on 1/1/2019. They first approach BIO in August 2018 regarding COS to F-1. Family lives in US, they have no current abroad residence, travel is a problem. COS can take 4-8 months. If a denial comes mid-semester, student would need to exit the US. Denial is guaranteed if not approved within 30 days of expiration of current status UNLESS student works with attorney to file bridge app.
  – Travel may often be better option, but has risks.
Looking Ahead: What to expect next...

- Looking at the Unified Regulatory Agenda
  - [http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Compilation_of_Agency_Initiatives_from_the_Unified_Agenda_of_Regulatory_and_De_regulatory_Actions/](http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Compilation_of_Agency_Initiatives_from_the_Unified_Agenda_of_Regulatory_and_De_regulatory_Actions/)
  - Establishing a Maximum Period of Authorized Stay for F-1 and Other Nonimmigrants.
  - H4 EAD (11/00/2018)
  - Practical Training Reform (Long Term Action)
  - Strengthening Oversight of Schools Certified to Enroll F and M Nonimmigrant Students (removed)
  - Eligibility Checks of Nominated and Current Designated School Officials of Schools That Enroll F and M Nonimmigrant Students and of Exchange Visitor Program-Designated Sponsors of J Nonimmigrants

- Proposed SEVIS fee increase for all new F-1/J-1 students, programs.
  - F-1: $200 to $350 J-1: $180 to $220 School recertification (every 2 years): $1,250
Trends: RFEs

- Reports of increased Requests For Evidence. Will we continue to see RFEs, or just denials?
- STEM OPT
  - CIP Code Clarification
    - Example: Master of Journalism degree program approved to change from CIP 09.0401 (Journalism) to 09.0702 (Digital Communication Media/Multimedia).
  - Relationship between position and education
- H1B and use of CPT
  - 12 months of “training” (CPT + OPT > 12mo)
  - CPT as an integral nature to degree, field of study
- Change of Status
  - Proof of attendance, huge document requests
Trends: USCIS OPT & OPT STEM Form Updates

• Background:
  – Multiple changes to the USCIS Form I-765
  – Went from 2 to 7 pages
  – Complex instructions
• Refer students to BIO OPT information and tutorials!
Trends: H1-B Premium Processing Suspension

• Background:
  – H1-B work visa premium processing suspended during peak processing times
  – Many student changes to H1-B delayed, employment ended
What does all this mean? What can you do?

- Stakes are increasingly higher for international students
- Be aware of the current Deny, Delay, Discourage approach
- Be flexible when working with students needing additional documentation, requests
- Be patient with BIO as we tighten advising and processes to meet a more conservative regulatory environment. We are aiming to best protect students and their records.
- Advocate! [https://www.connectingourworld.org/](https://www.connectingourworld.org/)
- For more detailed regulatory info: [nafsa.org/reginfo](https://nafsa.org/reginfo)
- Refer students to BIO!
  - BIO Drop-In Advising hours Monday-Tuesday & Thursday-Friday 10am-12pm & 1:00-4:00pm (no advising on Wednesdays)
  - Email: [internationaloffice@Berkeley.edu](mailto:internationaloffice@Berkeley.edu) Phone: 642-2818
CPT AT Form Updates
BIO Changes to CPT & AT Forms

• F-1 Curricular Practical Training (CPT)-
  employment authorizations for internships,
  field studies completed during degree
  program
• F-1 students may participate in a
  Curricular Practical Training program that
  is "an integral part of an established
  curriculum" and "directly related to the
  student's major area of study."
  – Either degree requirement for all students
    in degree program OR course enrollment
    required (often 199/197 or 299/297)

• J-1 Academic Training- employment
  authorization for internships, field studies
  completed during degree program or post-
  completion
• directly related to the major field of study
• Student must submit a letter of recommendation
  from the student's academic dean or advisor
  with:
  – The goals and objectives of the specific academic
    training program;
  – A description of the academic training program,
    including its location, the name and address of the
    training supervisor, number of hours per week,
    and dates of the training;
  – How the academic training relates to the student's
    major field of study; and
  – Why it is an integral or critical part of the academic
    program of the student.
CPT Form Updates

- Describe academic requirements of CPT course or degree requirement
- Explain how CPT directly relate to student's current major field of study
- Explain how CPT experience is an integral part of student's curriculum
- If PhD requesting FT CPT in Fall/Spring, explain why the FT employment experience is necessary or integral to the completion of thesis or dissertation

Academic Advisor's Recommendation (Required)
F-1 visa regulations state that an F-1 student may participate in a "curricular practical training program" that is "an integral part of an established curriculum" and "directly related to the student's major area of study."

This section must be completed with your academic advisor. Undergraduates = College/Department Advisor; Graduates = Faculty Advisor/Graduate Student Affairs Office

Describe the academic requirements of the CPT course enrollment or the degree requirement:


Explain how this CPT experience directly relates to the student's current major field of study:


Explain how this CPT experience is an integral part of the student’s curriculum. (If the student is a PhD advanced to Candidacy requesting full-time CPT in Fall/Spring, please explain why the full-time employment experience is necessary or integral to the completion of the thesis or dissertation):


I confirm that I have reviewed and approve the Curricular Practical Training plan as described in this form.

Advisor Name  Title  Title

Berkeley UNIVERSITY OF CALIFORNIA
CPT Form Example- Statistics

• Describe academic requirements of CPT course or degree requirement:
  1. Oski will complete a 7-10 page paper on topic XXXXX
  2. Oski will complete a weekly experiential journal entry reflecting on their practical training experience

• Explain how CPT directly relate to student’s current major field of study
  • Oski’s major is Statistics. Specifically, the Summer Data Intern assignments with Apple will allow Oski to gain experience in working with large data sets and extensive statistical modeling.

• Explain how CPT experience is an integral part of student’s curriculum
  • Students in Statistics major gain theoretical knowledge of statistical modeling and analysis through coursework/projects. This experience provides Oski a critical opportunity to practice those skills in a real-world scenario with big data sets and analytical technology unavailable at UC Berkeley. Real-world application of quantitative skills is critical to a full understanding of the Stats curriculum.

• If PhD requesting FT CPT in Fall/Spring, explain why the FT employment experience is necessary or integral to the completion of thesis or dissertation
  • This experience provides Oski with access to large data sets and analytical technology unavailable at UC Berkeley. Real-world application of quantitative skills, and these particular data sets and proprietary technology are necessary to the completion of Oski’s dissertation on XXXXXX.
AT Form Updates

- Describe academic goals or objectives
- Explain how AT directly relates to student’s current major field of study or EAP field of study
- Explain how AT experience is an integral or critical part of student’s program
- If PhD requesting additional 18 month extension of post-completion AT, explain the research aspect of the AT experience

| Describe the academic goals and/or objectives of the student’s Academic Training experience: |
|                                                                                          |
|                                                                                          |

| Explain how this Academic Training experience directly relates to the student’s current UC Berkeley degree or Education Abroad Program (EAP) field of study: |
|                                                                                          |
|                                                                                          |

| Explain why this Academic Training experience is an integral or critical part of the student’s academic program: |
|                                                                                          |
|                                                                                          |

| PhD STUDENTS ONLY- If the student has completed a Ph.D. and is requesting an extension beyond the initial 18 months of work authorization, please briefly address the research aspect of the Academic Training experience: |
|                                                                                          |
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AT Form Example- Mechanical Engineering

• Describe academic goals or objectives of the academic training experience:
  
  Oski’s academic goals for work-based learning related to his ME degree include:
  1) gaining exposure and competency in utilizing proprietary 3-D design tools,
  2) advancing his overall design skills, and
  3) deepening his understanding of how parts behave in different real-world environments.

• Explain how CPT directly relate to student’s current major field of study
  
  • Oski has completed a PhD in Mechanical Engineering and completed his dissertation on 3D
    modeling. Specifically, the 3D mechanical design and tooling design assignments with Apple will
    allow Oski to gain experience in a number of design tools and techniques described in his
    dissertation.

• Explain how the AT experience is an integral part of student’s academic program
  
  • PhD Students in ME gain theoretical knowledge of engineering/design through coursework/research. This experience provides Oski a critical opportunity to practice those skills in a real-world scenarios with hardware and technology unavailable at UC Berkeley. Real-world experience of design and implementation is critical to complete a fully rounded post-graduate ME curriculum.