

*If you have any questions
about this Advisory,
please contact:*

NAJIA KHALID
203.498.4314
nkhalid@wiggin.com

ANAND SINHA
203.498.4374
asinha@wiggin.com

AARON BAYER
860.297.3759
abayer@wiggin.com

Immigration Briefing: What Educational Institutions, Faculty/Staff and Students Need to Know

To date, there have been multiple immigration updates and Executive Orders issued by the new administration impacting immigration practices by the Department of Homeland Security ("DHS"), the Department of Justice ("DOJ"), the Department of Labor ("DOL"), and the Department of State ("DOS"). In an effort to provide the most relevant information for educational institutions, faculty/staff, and students, Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group is distributing this immigration briefing in conjunction with the Education Practice Group. The briefing is intended to be a resource but does not constitute legal advice; please contact our legal team to review specific situations and concerns. As you read the following briefing, please remember that DHS includes the U.S. Citizenship and Immigration Services ("USCIS"), U.S. Customs and Border Protection ("CBP"), and U.S. Immigration and Customs Enforcement ("ICE"); and DOS includes U.S. Embassies and Consulates.

- NAJIA S. KHALID and AARON BAYER

SUMMARY OF THE EXECUTIVE ORDER ISSUED ON TUESDAY, APRIL 18, 2017: "BUY AMERICAN, HIRE AMERICAN"

Although there **should be no immediate impact** to H-1B visas or visa holders, educational institutions should know that the DHS, DOJ, DOL, and DOS have been directed to review the H-1B Temporary Worker Visa Program for foreign nationals who perform services in a "specialty occupation" that generally requires a Bachelor's degree or its equivalent. The agencies have been asked to suggest changes to prioritize the most skilled and highest paid positions (most anticipated changes **require legislative action and, therefore, need time** to be worked out).

Agencies were also asked to take action to address fraud in order to protect U.S. workers. There are currently anti-fraud provisions in place, recorded cases of fraud are low, and employers already must adhere to compliance requirements for documenting that U.S. and H-1B workers in the same/similar occupation are treated fairly. Also, the majority of employers utilizing the H-1B Program do so not to replace U.S. workers, but rather to fill specialty positions (often with individuals who have obtained degrees from U.S. educational institutions). Still, H-1B Program fraud is one key issue raised by the new administration.

*See the full text of the Executive Order by clicking **HERE**.*

CONTINUED ON NEXT PAGE

Immigration Briefing: What Educational Institutions, Faculty/Staff and Students Need to Know

CBP INSPECTION OF ELECTRONIC DEVICES UPON ENTRY INTO THE U.S. AND TRAVELER TIPS

On April 11, 2017 CBP released guidance outlining its legal authority to inspect, search, and detain all persons, baggage, and merchandise arriving in or departing from the U.S. This guidance is relevant to colleges and universities whose faculty and students, including foreign nationals, travel to and from the U.S. CBP stated that all travelers applying for admission into the U.S. may be subject to inspection of their electronic devices based on a number of factors, including but not limited to: random inspection, having incomplete travel documents, previously violating laws enforced by CBP, or having a name that matches a person of interest in one of the government's enforcement databases. CBP also noted that if a traveler is selected for electronic device inspection, s/he should receive a notice from CBP, the device may be detained for examination/copying, and s/he should be treated in a "courteous, dignified, and professional manner."

See the full text of the CBP *handout for Inspection of Electronic Devices* by clicking [**HERE**](#).

Although the Supreme Court previously ruled that the Constitution requires police to obtain a warrant to search the smartphone/laptop of someone under arrest, the government does not agree that the same safeguards against unwarranted searches of devices apply to travelers who encounter CBP. Since the law on this issue is unsettled, it is advisable for all international travelers to exercise caution, be prepared for CBP delays upon entry into the U.S., carefully review DHS and DOS travel guidelines, and

keep in mind the following tips for appearing before CBP with electronic devices:

- Limit the number of devices and data being carried in and out of the U.S.
- Be prepared to cooperate and provide CBP with device passwords. Check apps and online profiles/postings in advance and avoid controversial posts.
- Invest in a travel-only smartphone or laptop that does not contain sensitive information.
- Ship encrypted devices to yourself in advance of travel (CBP claims authority to search international packages).
- Note that forensic searches by CBP can detect deleted items, metadata, and other files.
- Encrypt devices with strong and unique passwords and shut them down when crossing the border.
- Sensitive data/photos should be saved in a secure cloud-storage account, don't keep copies in your physical possession, and disable apps that connect to the storage account.

Additionally, educational institutions should provide the following advice to international students and faculty who are traveling abroad for the summer:

- Carry with you, as applicable: passport, recently endorsed/current visa status approval notices, offer letter, current paychecks/records as proof of employment or student status.
- Keep handy contact information for the International Student/Faculty office advisors and visa coordinators, as well as

immigration counsel.

- Be very careful with what you read and hear - news media and even foreign governments may have incorrect information. Check with the USCIS, DOS/Consulate websites, and the American Immigration Lawyers Association or other trusted and confirmed resources for immigration status information.
- Check with CBP at your port of U.S. entry in advance to understand entry procedures.
- Be prepared for scrutiny and delays, as well as to be questioned by CBP upon arrival into the U.S.

REVISED 90-DAY TRAVEL BAN ON ENTRY INTO U.S. FOR INDIVIDUALS FROM SYRIA, SUDAN, IRAN, SOMALIA, LIBYA, AND YEMEN

Effective March 16, 2017, the administration replaced the previously issued Executive Order 13769: "Protecting the Nation from Foreign Terrorist Entry into the United States." Iraq was removed from the list of designated countries for the travel ban of its nationals, and provisions were made to grant waivers to the ban on a discretionary case-by-case basis and to exempt from the ban Legal Permanent Residents of the U.S. ("green card holders") and current temporary visa holders. Various U.S. courts continue to find that the travel ban cannot be implemented, and DOS is no longer suspending/canceling the issuance of U.S. visas and immigration benefits to nationals of the designated countries. Although the travel ban is still under review, nationals for the banned countries should be especially mindful if they must travel in and out of the U.S.

CONTINUED ON NEXT PAGE

Immigration Briefing: What Educational Institutions, Faculty/Staff and Students Need to Know

DHS IMMIGRATION ENFORCEMENT DEVELOPMENTS

On February 20, 2017, DHS Secretary, John Kelly, signed two memoranda in order to implement immigration enforcement provisions of various Executive Orders, namely, "Border Security and Immigration Enforcement Improvements," and "Enforcement of the Immigration Laws to Serve the National Interest." These Executive Orders prioritize the removal from the U.S. of every individual who is without immigration status; make an enforcement priority of any such person who has been charged with or convicted of a criminal offense, or who has committed acts that constitute a criminal offense or any type of fraud, or who has used a fake social security number, or has directly/indirectly received any federal benefit.

The orders also authorize removal ("deportation") court proceedings to be conducted outside of the U.S.; restrict the use of discretionary authority by DHS officers and prosecutors to grant immigration relief; authorize criminal prosecution of unlawful entry into the U.S.; reinstate the concept of "Secure Communities" (parts of which have previously been found unconstitutional) requiring local law enforcement to share information with DHS; expand the concept of having local law enforcement perform functions of federal DHS enforcement officers; order the hiring of 5,000 more CBP Border Patrol Agents and 10,000 more ICE Enforcement and Removal Operations Officers; plan to publish a weekly list of criminal acts committed by foreign nationals in the U.S.; promulgate regulations to collect civil fines and penalties from unlawfully present non-U.S. citizens; require the IRS

and Social Security Administration to share with DHS data on individuals without immigration status; and remove Privacy Act protections from anyone other than U.S. citizens and Lawful Permanent Residents of the U.S.

Since the release of the Executive Orders and policy memoranda, there has been a noticeable rise in enforcement actions. Please see the following **KNOW YOUR RIGHTS** guidance for individuals if ICE comes to the **work place, home, or to a public place**.

UPDATE ON DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

A number of educational institutions enroll students who may not have lawful immigration status but are eligible for discretionary immigration relief under DACA. DACA is a program instituted in 2012 by the Obama Administration through executive action. The program allows certain individuals who came to the U.S. as children and who meet specific guidelines to request deferred action against removal from the U.S. for a period of two years, subject to renewal. DACA candidates are eligible to apply for work authorization. Eligibility for special treatment under DACA is **not the same thing as obtaining lawful immigration status**.

The new administration pledged to end DACA during the election campaign, and in January a **DRAFT** Executive Order "Ending Unconstitutional Executive Amnesties" was leaked, which outlined steps to rescind DACA, halt approval of initial and renewal DACA applications, allow current employment authorization documents

(EADs) to remain valid until they expire, and stop the issuance of Advance Parole to DACA recipients. The **DRAFT Executive Order has not been signed** by the President.

Conflicting comments have been made about rescinding or preserving DACA since that time. It remains possible that USCIS could stop approving DACA applications, or halt components of DACA (i.e., stop accepting initial DACA applications, stop accepting or approving renewal applications, or revoke DACA/EADs for individuals who currently have them). To date, there have been **no changes** to the DACA program, and USCIS continues to process both initial and renewal Forms I-821D and accompanying Forms I-765.

Educational institutions may wish to offer legal counseling services to DACA students and should stay apprised of USCIS updates in the event new executive actions are ordered.

"SANCTUARY" CAMPUSES

Campuses nation-wide have been declaring themselves to be a "sanctuary" to support immigrant populations. Although not legally defined, the idea behind a "sanctuary" is to affirm commitment to principles of non-discrimination, including equal protection under the law, regardless of national origin or citizenship, and to assert that officials will not voluntarily assist in efforts by the federal government to remove ("deport") members of the campus community solely because of their citizenship status. Action items for sanctuaries include gathering legal resources for those with questions about immigration status, and facilitating resources and support services.

CONTINUED ON NEXT PAGE

Immigration Briefing: What Educational Institutions, Faculty/Staff and Students Need to Know

Sanctuary campuses must comply with the law. Within legal confines, if a warrant has not been issued, it is possible to limit and protect the sharing of information with federal immigration enforcement officers and access to private school property. Our legal team is available to review campus policies and train individuals accordingly. We are also able to advise those who wish to understand more about “sanctuary” designations, the lawful steps educational institutions may take to protect immigrants, and the limits on what actions are legally permitted.

INTERNATIONAL ENTREPRENEUR RULE

Wiggin and Dana collaborates with student entrepreneurship initiatives at several universities, including **PowerBridgeNY**, **Columbia TechVentures**, the **NYU Entrepreneurial Institute**, and the **Yale Entrepreneurial Institute**. For all educational institution entrepreneur networks, it is important to note that the final USCIS International Entrepreneur Rule should become effective July 17, 2017. The Rule will enable eligible entrepreneurs and their spouses/minor children the ability to enter the U.S. through discretionary “parole” (which is permission to enter and remain in the U.S., although it is not a visa or immigration status). Entrepreneurs will have the ability to develop U.S. enterprises, and their spouses will be able to apply for employment authorization. To determine eligibility, USCIS will evaluate entrepreneurs who have at least a 15% ownership interest and are actively involved in critical operations/management of emerging companies formed in the U.S. within the

past 3 years, where the emerging company has “substantial and demonstrated potential for rapid business growth and job creation.” Entrepreneurs should present supporting evidence to demonstrate that, within 365 days prior to application submission, the enterprise has received at least \$345,000 investment of capital from “qualified U.S. investors with established records of successful investments” or at least \$100,000 in awards or grants from “qualified federal, state or local government entities.” If USCIS determines that one or both criteria are satisfied, or partially satisfied with additional supporting evidence of rapid business growth and job creation, then such entrepreneurs may be authorized to enter the U.S. for up to 2 years to develop and expand the start-up enterprise. USCIS will permit a request for re-parole for up to 3 additional years if the entrepreneur and startup continue to provide a “significant public benefit” through additional substantial capital investment, revenue (i.e. increase of 20%), or the creation of at least 10 full-time jobs for U.S. workers.

For additional information, see our client alert regarding proposed rule and the final rule: <http://www.wiggin.com/16694> and <https://www.federalregister.gov/documents/2017/01/17/2017-00481/international-entrepreneur-rule>.

Wiggin and Dana’s Immigration and Nationality Law and Compliance Practice Group will be providing additional briefings. Please contact Najia Khalid at 203.498.4314 or nkhalid@wiggin.com if you have any questions.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.