

FRANCZEK RADELET

ATTORNEYS & COUNSELORS

Navigating Change

Immigration Issues Affecting Schools

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Agenda

- Immigration 101
- Process and Requirements for Accepting International Students
- Looking Ahead: Trump Administration policies and planned changes
- Immigration Enforcement: Obligations and Best Practices
- Community Issues in Uncertain Times
- Q&A

Basic immigration terms

- Lawful status: Presence in the U.S. with permission from the U.S. government, either as a U.S. citizen, permanent resident, or in an authorized temporary/short-term status or visa
- Unlawful or Undocumented immigrant: Someone who has not been granted permission to enter or who has overstayed the term of their temporary admission
- Non-immigrant Visa (Visa): Temporary status authorizing temporary (not permanent) entry and stay in the U.S. Evidence may include a visa stamp in a passport or Form I-797 issued by U.S. Customs and Immigration Services (USCIS)
- Immigrant Visa (Permanent Residency/Green Card): This is a non-expiring status that allows permanent stay and work authorization in the U.S. Officially known as an “I-551”
- I-94: Issued to a foreign national to authorize temporary stay in the U.S. and includes the expiration date for that authorized entry
- Visa Stamp: A document entered into a foreign national’s passport by the Dept. of State as evidence of an approved temporary status

Permanent Residency (PR)

- Ways to become a permanent resident
 - Family-based petition
 - Employment-based petition (a student may be a derivative of a parent's work sponsorship)
 - Diversity Lottery
 - Adjustment of Status based on grant of short-term status, such as refugee/asylees, S, T, U visas, etc. that create eligibility for PR
- Can apply outside the U.S. or inside the U.S.

Special Immigration Juvenile Status

- Classification that results in a child obtaining permanent resident status when the child
 - Is declared a dependent by a U.S. juvenile court, or who has been placed in the custody of a state agency or other individual/entity; AND
 - Whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or other similar basis under state law
- 105 ILCS 5/10-20.12b
 - “Legal Custody”

F-1 attendance at high schools

- Private schools enrolled with SEVIS can issue an I-20 and admit an F-1 student
- An F-1 student can study at a public high school for up to 1 year, but only if he/she reimburses the school for the cost of attendance
- Some public schools have accepted F-1 students

J visas

- J-1 visas are exchange visitor visas
- High school (secondary) students from other countries can attend high school in the U.S. for up to 1 year on a J-1 visa
- Elementary and middle school students are ineligible
- Dependents of J-1s are issued J-2 visas

Requirements of the J-1

- The applicant must be between 15-18.5 years old
- Dept. of State screens host families through background checks
- J-1 students can participate in school sanctioned and sponsored extra-curricular activities, including after-school sports
- PT or FT employment not permitted, but occasional work is permitted
- The public secondary school or private school does not issue any documents to foreign nationals

B visas

- B-1: Temporary business visitor visa
- B-2: Temporary visitor to the U.S. for pleasure
- Visa holders sometimes enter on a B-1/B-2 and then “overstay” their I-94 admission period
- Entry on a B-1/B-2 may not be conclusive regarding “residence”

- **Asylees and Refugees:** These are foreign nationals who have been admitted to the U.S. on account of persecution
 - Lawfully admitted, documented by an I-94
 - Eligible for PR after 1 year
- **S/T/U visas and VAWA:** Statuses related to being witnesses or victims of certain crimes (for example, domestic violence) in the U.S.
 - Lawfully admitted, documented by an I-94
 - Eligible for PR, for some categories after a period of holding this status
- **Derivative status:** K-3, H-4, L-2, etc.

Accepting International Students

- Plyler v. Doe
 - 1982 Supreme Court decision
 - Limited to K-12 schooling
 - Intermediate scrutiny applies to state efforts to restrict education based on immigration status
 - Schools should not inquire about immigration status

- 105 ILCS 5/10-20.12b
 - “Legal Custody”: (v) Custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the pupil and provides the pupil with a regular fixed night-time abuse for purposes other than to have access to the educational programs of the district

F visas

- F-1 visas are issued to foreign nationals wishing to study at U.S. educational institutions
- F-1 visas are only issued for attendance at institutions registered with SEVIS (Student Exchange Visitor Information System)
- An F-1 applies to the institution; if admitted, the institution issues an “I-20” to him or her
- The foreign national takes the I-20 to the Consulate for visa issuance
- F-2 visas are issued to dependents (spouse and children under 21) of an F-1

Hypotheticals

- 16-yr old student from China is admitted to a U.S. private school registered with SEVIS. The school issues an I-20 to him and he receives an F-1 visa. His school is responsible for ensuring his compliance with his educational requirements (FT attendance).

Hypotheticals

- 16-yr old student from China is admitted into a study abroad program. He is placed with a host family in Arlington Heights to attend the local public school for 1 year. The host family is required to follow certain rules and regulations.

Hypotheticals

- A Mexican national, Juan, enters the U.S. as a 3-year old. He attends a public school for 7 years. His mother Gloria then takes him back to Mexico to celebrate his grandfather's birthday. Juan and Gloria are refused readmission to the U.S. because they were apparently present in the U.S. unlawfully. Can the school issue Juan an I-20 so that he can be admitted to the U.S.?

Hypotheticals

- An Indian national enters the U.S. with his family on a visitor visa. A month after they enter, the visitor goes to the local public middle school to enroll his 10- and 14-yr olds. What documents should the school ask for? Is the immigration status of these students relevant?

Hypotheticals

- An foreign national enters the U.S. on a visitor visa and then enrolls at a public school. Unless the school is registered with SEVIS, it cannot issue an F-1 visa to the student to allow him/her to re-enter the U.S.

Immigration: A World In Flux

- Obama Administration Actions
 - Reliance on administrative and executive action due to inaction in Congress
- Piecemeal changes have dramatically impacted family-based immigration
- Referred to as executive or administrative actions or as regulatory changes

Deferred Action for Childhood Arrivals

- Created by executive action on June 15, 2012
- **Not** a lawful status or path to citizenship
- Use of Prosecutorial Discretion to protect recipients from removal
- Applicants can apply for work authorization and social security numbers

DACA Requirements

- At least 15 years of age at time of application, unless applying during removal proceedings or have a final removal or voluntary departure order
- Under the age of 31 as of June 15, 2012
- Came to the U.S. before 16th birthday
- Continuously resided in the U.S. since June 15, 2007, up to the present time
- Physically present in the U.S. on June 15, 2012, and at the time of filing DACA request
- Had no lawful status on June 15, 2012
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States
- Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety

Legislative v. Executive Authority

- Congressional action

- Enacts legislation, override disliked regulations, and use the power of the purse
- Makes policy changes to reverse existing regulations or case law
- Required for changes to visa numbers/increasing the H1B quota
- Necessary for comprehensive legalization program with path to citizenship

- Executive Branch

- Possesses broader authority in immigration than in other areas
- Sets policy through new regulations
- Utilizes enforcement authority to grant deferred action
- Reinterprets existing regulations
- Impacts adjudications, fees, and creates programs under existing laws that do not require Congressional funding

Trump's Announced Priorities

- Security
 - Mexican border enforcement via “the Wall”
 - Prioritize removal of criminals and people without authorized status
- End DACA
 - Since December 2016, said there will be a program to replace DACA; no details on what this would be at this time
- Defund “Sanctuary Cities”
- Limit legal immigration
 - Limiting refugees, immigrants from certain nations
 - Reforms of certain work visa programs possible

BRIDGE Act

- Bipartisan bill pending in Congress
- Intent: permanent solution to grant DACA recipients “provisional protected presence” and work authorization
- Would impose restrictions on sharing information provided in DACA applications for enforcement purposes
- Not the same as the DREAM Act, which did not pass in 2011 and has not be reintroduced
 - BRIDGE does not include path to citizenship
- Those with DACA would automatically convert into this program

Executive Actions - Enforcement

- Border Security and Enforcement
 - Increased enforcement and administration resources internally and at the border
 - Empower State and local law enforcement to perform immigration enforcement
 - Defund “Sanctuary Cities”
 - Return of “Secure Communities”
 - End of Barack Obama’s directives on prioritized enforcement
 - Exclusion of non-citizens/LPRs from Privacy Act for enforcement purposes
 - Southern border Wall construction

Executive Actions - Reformation

- Refugees and National Security
 - Suspension of visas to nationals of certain countries
 - Temporary cessation and long-term overhaul of U.S. refugee resettlement and slashed quota for FY2017
- DACA
 - Cessation of the program?
- Limitations on legal immigration
- Access to public benefits

Increased Enforcement

- Trump has emphasized deportation of those without lawful status during his campaign
- Certain criminal backgrounds and outstanding orders of removal/repeat unlawful entrants are a priority
- Obama Administration deported record numbers and Immigration Courts are overwhelmed
- Resources and funding are an issue; EO called for increased enforcement and administrative personnel
- State and local law enforcement may be coopted for enforcement under the EOs

Do schools have a duty to report?

- If a school knows a student is undocumented, the school currently has **no duty** to report that information
- Consider FERPA protections
- All students who are residents under Illinois law must be admitted

Enforcement Personnel

- ICE (Immigration and Customs Enforcement) is charged with enforcing immigration laws through investigations and detention
- Other law enforcement officials (local, state or federal) can be involved in immigration enforcement as well.
- DHS seeking agreements with State and local law enforcement

ICE visits: Obligation v. Best Practice

- In general, treat a visit from immigration authorities much like you would a visit from authorities about other non-safety matters
- Consider physical and emotional safety of students, disruption to learning environment
- They may have a warrant/court order permitting their entry and access

Sanctuaries and Safe Havens

- What do these terms mean? Ambiguities
- Benefit of claiming Sanctuary or releasing a statement about protections
 - Community politics
 - Create clear understanding of directives for staff and students
 - Support students and their families
- Limitations/Downsides
 - Schools must comply with laws regarding searches and seizures, etc.
 - Consider potential impact to federal funding if applicable
 - Community politics

Where is the limit?

- A school must allow law enforcement or ICE access if they have a warrant/court order permitting them access
- 2011 ICE Ruling notes that law enforcement and ICE officials should enter schools for law enforcement purposes without the permission of the university *only under the most exigent and compelling circumstances*

Community issues:

- Schools with undocumented or lawful foreign national students should be aware of impact students are already feeling
 - Fear of deportation or deportation of family/friends/loved ones
 - Financial issues due to inability to work without authorization
 - Stress due to fear about changes in enforcement or changes to lawful immigration programs

Psychological Impacts of Being Undocumented

- Constant fear of deportation (whether their deportation or deportation of loved ones)
- Secrecy and trust
- Higher levels of stress due to financial barriers
- Anxiety about the future
- Unprecedented occurrences of depression, anxiety, substance use/abuse, and suicidal ideation

Community issues continued:

- Bullying
- Access to legal advice: Some students may be unaware of eligibility to apply for valid status
- Awareness of rights: “Know Your Rights” training through local organizations
- Financial resources for students ineligible for certain aid

Best Practices

- Provide a variety of tools to help undocumented youth build resiliency
- Group Involvement
 - Peer Support
 - Formal Groups (self-help, support groups, extracurricular clubs)
 - Activism and Civic Engagement
 - Community Education & Training
- Mentorship
- Empowerment
 - KYR (Know Your Rights) and Community Based Organization trainings
 - Stress Management workshops
 - Community Service Work
 - Provide access to legal resources and accurate information

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Safe Spaces for Undocumented Students

- Create a space where
 - Students feel safe telling their narrative
 - Don't force a student to share if they are not ready
 - Never out a student as being undocumented
 - Confidentiality is stressed
- Acceptance is provided among all members
- Allies are welcome and actively participate
- Students take ownership of the process
 - Creation of group, mission statement, format of group, etc.
 - Activities and involvement opportunities
- Education on Immigration Issues
 - Empowering students and their families
 - Change the culture of our schools

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