

**ILW.COM TELEPHONE SEMINAR BACK TO SCHOOL: IMMIGRATION ISSUES
FOR STUDENTS AND UNIVERSITIES
SESSION III: OCTOBER 30, 2008
HELPING EDUCATIONAL INSTITUTIONS WITH THEIR IMMIGRATION ISSUES**

**PART VII: DEVELOPING INSTITUTIONAL POLICY, From F, J, or M direct to
Immigrant, When, Why, How**

There are numerous areas related to immigration in which educational institutions probably should have written policies. Each has been touched on briefly by the other speakers.

- A. Policies related to participating in SEVIS.
 - 1. If an institution decides to issue I-20s and DS-2019's, then it probably already has developed a SEVIS compliance policy.
 - a. Will required information about student and scholars be uploaded to SEVIS in real time (RTI) or by batch?
 - b. Will the institution purchase an existing software, such as fsaATLAS or design it's own?
 - c. What reviews will take place before information is uploaded?
 - 2. Policies concerning RO/ARO and PDSO/DSO appointment and training
 - a. Who will decide who should serve as the Responsible Officer (RO) for the J program and the Principal Designated School Official (PDSO) for the F program?
 - b. Who will insure that the RO and ARO's, PDSO and DSO's are adequately trained?
 - 3. Who will insure and monitor that the institution's responsibilities are being met?
 - 3. Policies related to advising and assisting international students
 - a. Traditionally, international student and scholar advisors play a three-part role:
 - i. University employee;
 - ii. Student advisor/counselor with cross-cultural aspect; and
 - iii. Institutional agent responsible for reporting to the government.
 - b. Who will advise the advisors when conflicts of interest arise?
- B Policies re filing nonimmigrant visa applications for faculty and staff
 - 1. When OPT/AT available, will the institution insist that it be utilized by the in-coming scholar?
 - 2. When should the various types of nonimmigrant visas be used:
 - a. J-1 exchange visitor program be used:
 - i. For students.
 - ii. For faculty, staff, self-sponsored visitors
 - b. When should the H-1B status be used—availability of filing fees in budget, grant funds, tenure-track faculty, clinical faculty in medical school

- c. Other: TN, H-1B1, E-3, O, L (if an option)
- D. Policies re supporting/filing/sponsoring permanent residence for faculty and staff.
 - 1. Issues with state classified employees at public institutions;
 - 2. "Permanent" v. "Temporary" employees:
 - a. Jobs expected to last one year or more;
 - b. Jobs on "soft" (grant) funding as opposed to "permanent" (institutional) funding;
 - c. Jobs seen by the institution as training or temporary positions:
 - i. Postdoctoral fellows.
 - ii. Clinical medical residents and fellows.
 - iii. Student employment.
 - 3. Who drives the choice:
 - a. The institution, but what entity within the institution?
 - b. The employee?
- E. Policies concerning enrollment of students.
 - 1. Should the institution enroll foreign students only in F (or J) status?
 - 2. Should the institution enroll undocumented aliens?
 - 3. Should the institution allow those in B status to enroll as full-time students?

PART VIII: CAN A NON-RESIDENT ALIEN BE A RESIDENT FOR TUITION?

- A. Tuition classification is an issue for state institutions; is state-law driven; and states' laws vary considerably.
 - 1. Discovering the state's law and interpretations:
 - a. Sometimes the law for tuition classification for nonimmigrants is based on what the immigration law requires in terms of residence abroad and a nonimmigrant intent. See for example *Toll v. Moreno*, 458 U.S. 1 (1982)(University of Maryland and students in A and G status); INS General Counsel "Opinions re Capacity for Domicile under Federal Law" (1985-1986)(in correspondence with the Coordinating Board of the Texas State College and University System, opining on 11 different statuses and whether each is capable of establishing domicile in the U.S.).
 - 2. Example of one state's tuition classification law: Colorado law permits any lawfully present nonimmigrant who can establish one-year of domicile to petition to be classified in-state for tuition purposes, except those whose nonimmigrant status is a result of coming to the US for study or training and their dependents: F, M, and J student and trainee. See C.R.S. § 23-7. See also the website for Colorado tuition classification issues at the Colorado Department of Higher Educations' website: <http://highered.colorado.gov/Finance/Residency/>
- B. In-state tuition for undocumented aliens is an area of developing law.
 - 1. IIRAIRA Section 505 (8 U.S.C. § 1623) enacted in 1986 prohibited in-state tuition based on residence in a state unless the state would also provide

the same tuition benefit to US citizens/nationals residing in another state; no implementing regulations.

2. 10 states have since passed laws subsequent to the enactment of IIRAIRA that permit in-state tuition to certain undocumented aliens not based on residence; some are being challenged in courts.
- C. Suggested resources:
1. Link on Michael Olivas's, faculty member at University of Houston, website focusing on Recent Developments in Undocumented College Student Issues: www.law.uh.edu/ihehg (link on right side, also extensive bibliography).
 2. Ellen Badger and Stephen Yale-Loehr, "They Can't Go Home Again: Undocumented Aliens and Access to Higher Education," 5 Bender's Immigration Bulletin, 413, 415-16 (May 15, 2000).