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April 2, 2007

Director
Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W.
Third Floor
Washington, D.C. 20529

Re: DHS Docket No. USCIS-2006-0044

Dear Director:

On behalf of the University of California (UC), we appreciate the opportunity to comment on the proposed rule the U.S. Citizenship and Immigration Services (USCIS) issued on February 1, 2007. In this action, the Department of Homeland Security (DHS) outlines increased fees for its immigration and naturalization services, as part of DHS's larger effort called "Building an Immigration Service for the 21st Century."

The University of California system includes ten campuses with 209,000 students, five medical centers, 15 health professional schools, three law schools, and a Division of Agriculture and Natural Resources that reaches into every county in the state. UC's academic offerings span more than 150 disciplines, with more departments ranked in the top 10 nationally than at any other university. UC confers more than 40,000 bachelor's degrees each year and more Ph.D.s than any other U.S. university, comprising seven percent of the annual nationwide total. In addition, UC offers an Education Abroad Program that provides students with learning opportunities around the world, and UC has academic centers in Sacramento and Washington, D.C. to give students an up-close look at the world of government.

We pledge to work with the DHS and other federal agencies to improve the current systems for processing visa applications and employment-based petitions, but we also want fees to remain as affordable as possible.

While we understand the Department's rationale for proposing revenue increases, we are concerned about the negative impact this proposal will have on students and scholars, and we are unconvinced that the promises made in this notice can be realized in a timely manner. If we knew the higher fees were going to resolve the backlog our students and scholars often experience, then perhaps we could support an increase to pay for sought-after improvements. The problem is, however, that the proposed rule does not outline an overall strategic plan for improvements, with measurable benchmarks and tangible goals for implementing the needed upgrades, or a specific timeline or completion schedule to assure interested parties that these improvements will actually be accomplished.

Background

The University of California cares about the safety of our students and scholars and firmly believes that colleges and universities must accept a key role in keeping our nation safe from those who would cause our people harm. The higher education community has already demonstrated its willingness to do this, through its substantial investment in the personnel, computer hardware and software needed to assure efficient and full compliance with SEVIS.

The University has at its very core the need for the free exchange of ideas and knowledge between students and scholars in this country, with their international counterparts, who make our universities interesting and diverse, and who contribute greatly to our research, development, innovation and training, particularly in STEM fields and critical-need languages, as well as in health, education, business, energy, and other disciplines.

We can only achieve our goals for excellence and remain globally competitive through partnerships with institutions around the world and with the continual exchange of people, ideas, and resources. While we can certainly understand DHS's need for increased operating funds, we need to look at the cost and benefits of a robust system of international education and foreign exchange, and also consider in that analysis the value of increased global understanding and international good will that results.

We believe the proposed fee increases will create *disincentives* for talented international students and highly trained scholars to study and work in the United States. Together with the disadvantages of perceived and actual visa delays, security clearances, and barriers to employment opportunities in the U.S. (e.g. the H-1B cap), these proposed fee increases are being viewed by the international student and scholar community as further evidence that the United States is unwelcoming of the world's best and brightest talent.

Prior to outlining UC's specific recommendations in response to the DHS proposal, I offer the following general concerns:

- The University of California is concerned that without a more clearly defined work plan, there is substantial risk that even with the increased fees, students and scholars will continue to face delays and complications in seeking the services of DHS.
- A proposal for such large fee increases seems poorly timed in light of the expressed wishes of several agencies to support the value of international education as a key goal for U.S. foreign policy and competitiveness. In recent years, there have been several examples of meetings, summits, and reports involving Cabinet-level officials, all highlighting the need for the U.S. to compete more effectively in the global contest for talent. In fact, several of our Chancellors participated in a summit of higher education leaders in January 2006, which was convened by the U.S. Departments of State and Education to discuss public diplomacy, international exchange, and international education strategies for the future.

Proposed Fee Increases: *While the University of California understands that federal agencies may need additional funds during a time of fiscal constraints, it is not good public policy to create a pricing structure that puts benefits out of reach of those who qualify for and desire them. Further, UC believes the fee increases send a powerful message, which international students and scholars perceive as contradictory to Department of State public policy statements in support of international education.*

Most of the fee increases will affect students and scholars at our campuses, and while there are some offsets, they are limited and not very helpful. For example, the proposed increase in the I-485 fee (from \$325 to up to \$905) is partly offset by the fact that it is accompanied by the elimination of additional filing fees for work authorization and for permission to re-enter after traveling abroad. On the other hand, the inclusion of the fees in the proposed new schedule means that even those who do not expect to need those benefits will still be required to pay for them.

In looking at some of the other proposed fee increases, the change in the I-765 fee for employment authorization seems harsh, particularly when some students would not have secured employment for OPT, or for students who are applying for employment based on economic necessity.

We are also concerned with the proposed increase in the I-539 fee to extend or change nonimmigrant status. Presently, the I-539 is used for individuals who wish to apply for reinstatement to their original status. However, this increase will serve as a deterrent to reinstatement applications and could be circumvented instead.

It is also important to note that these fees are in addition to the required data collection and fraud prevention fee, which is not part of the fee schedule, and the premium-processing fee, which will remain at \$1,000.

The University of California believes there are other ways DHS could improve its efficiency and save money without the need to raise all the fees as well. For example, Designated School Officers (DSO) could be authorized to approve Optional Practical Training (OPT) in accordance with agency requirements. This was once possible, and schools are authorized to approve Curricular Practical Training. Further, with the Student and Exchange Visitor Information System (SEVIS) now fully in place, it would be easy to devolve this responsibility back onto the schools.

Fee Waivers: *The University of California recommends that DHS provide clear guidelines regarding eligibility for fee waivers, and allow transparency in the process so that institutions can explain the criteria to students and advise those eligible about their options.*

Congress has authorized USCIS to provide services to eligible applicants and petitioners who can establish that they are unable to pay the fee(s). In many cases, students do not have jobs and experience economic “hardship,” but they are unaware of the eligibility criteria and the application process.

Improved Services and Processing Times: *The University of California requests that DHS develop an overall strategic plan that sets specific benchmarks for improvements, and planned evaluations along the timeline to provide checks for compliance.*

The proposal outlines a number of efficiencies that the DHS plans to implement, but we are concerned about accountability. We fully agree that the processing times for standard H-1Bs, duplicate approvals, travel/re-entry permits, and work authorizations *must be substantially improved*, but for this to work, DHS must have develop a plan.

We believe the “Business Transformation Initiative” outlined by the Department should be an urgent priority, and we recommend that DHS provide clear plans for how USCIS plans to use the increased fees to assure accountability. For example, at a minimum, DHS should specify when changes will be made, such as enhanced IT capabilities including electronic filing and adjudication; employer pre-certified accounts; payment of fees via credit cards; and improved SSA-USCIS checks to expedite issuance of Social Security cards.

DHS could also ease processing by allowing O-1 extensions to be issued in one- to three-year increments; allowing multi-year Employment Authorization Documents (EAD); and permitting I-485 filings and benefits, such as work authorization and travel permits, even if a priority date is not available.

In addition, we urge USCIS to improve its reaction time for making changes in the SEVIS system. For example, when adjudications occur, any changes should immediately be reflected in the SEVIS system as originally intended. This is now not happening so schools are not able to determine using SEVIS if actions are taken or not.

Security Checks: *The University of California recommends that DHS provide information about this process so students, scholars, and their host institutions can know where within the approval and security clearance process the backlogs are.*

Additional funds must be made available for updated training of staff, and for creating clear expectations for when additional security checks will be imposed, such as Mantis reviews and “FBI checks.” Often, continued delays are referred to vaguely as FBI checks, but there is little understanding of the steps that must be taken to conduct a Mantis review or to complete an FBI check. Greater transparency in visa processing and approvals is long overdue and would allow visa applicants to follow their paperwork through the process and reduce the need for unnecessary security reviews.

The DHS overall strategic plan for improvements of services should also outline how funds will be allocated to the FBI to eliminate delays in the clearance process.

Customer Service: *The University of California recommends that DHS make improved customer service an urgent priority and implement the California Service Center (CSC) model at each Service Center.*

We are very pleased with the CSC customer service model, but remain concerned about the implementation of the Service Center Bi-Specialization System. The CSC had the least amount of backlog, but under bi-specialization, service has recently deteriorated considerably and has added costs for the university in delayed start dates and shipping fees. Prior to bi-specialization the CSC was processing H-1B petitions for extensions in 6 to 8 weeks. It now takes 10 to 12 weeks.

The University is also concerned about the consistency of adjudication within and across the Service Centers. Again, based on our extensive experience, we have seen varied outcomes for the same services based on differing interpretations of staff at the service centers, even after guidance from the national and regional offices about proper procedures. For example, one campus reports that all of the permanent residency petitions submitted to the Texas Service Center have been cleared within six months while the petitions retained at the Nebraska Service Center remain pending after more than eight months. Additionally, the Nebraska Service Center continues to issue extra-regulatory interpretations concerning educational evaluations, degree equivalency, and permanent employment, which do not appear to have been reviewed by USCIS Headquarters nor reviewed and agreed upon by the Texas Service Center

Conclusion

In conclusion, I think it is important that the U.S. Department of Homeland Security look at what our nation gains from a secure and efficient visa system that allows our colleges and universities to offer the free and open exchange of ideas and scholarship. The ability of the United States to retain its leadership position in science, research and development, education, and innovation, is dependent upon having fair and transparent visa policies that allow us to attract the world's best and brightest students to our shores

Again, I thank you for the opportunity to comment on the proposed changes, and we appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "A. Scott Sudduth". The signature is written in a cursive, flowing style.

A. Scott Sudduth
Assistant Vice President for Governmental Relations