IMMIGRATION

Paying Fines is Easy – Surviving Increased Scrutiny

FGI
FAKHOURY GLOBAL
IMMIGRATION

Presenters

Tracy Schauff
Senior Attorney
Fakhoury Global Immigration, USA
tracys@employmentimmigration.com

Brooke Stokdyk
Assistant Director, OISS
Michigan State University
stokdyk@msu.edu

AGENDA

Why Worry About Immigration

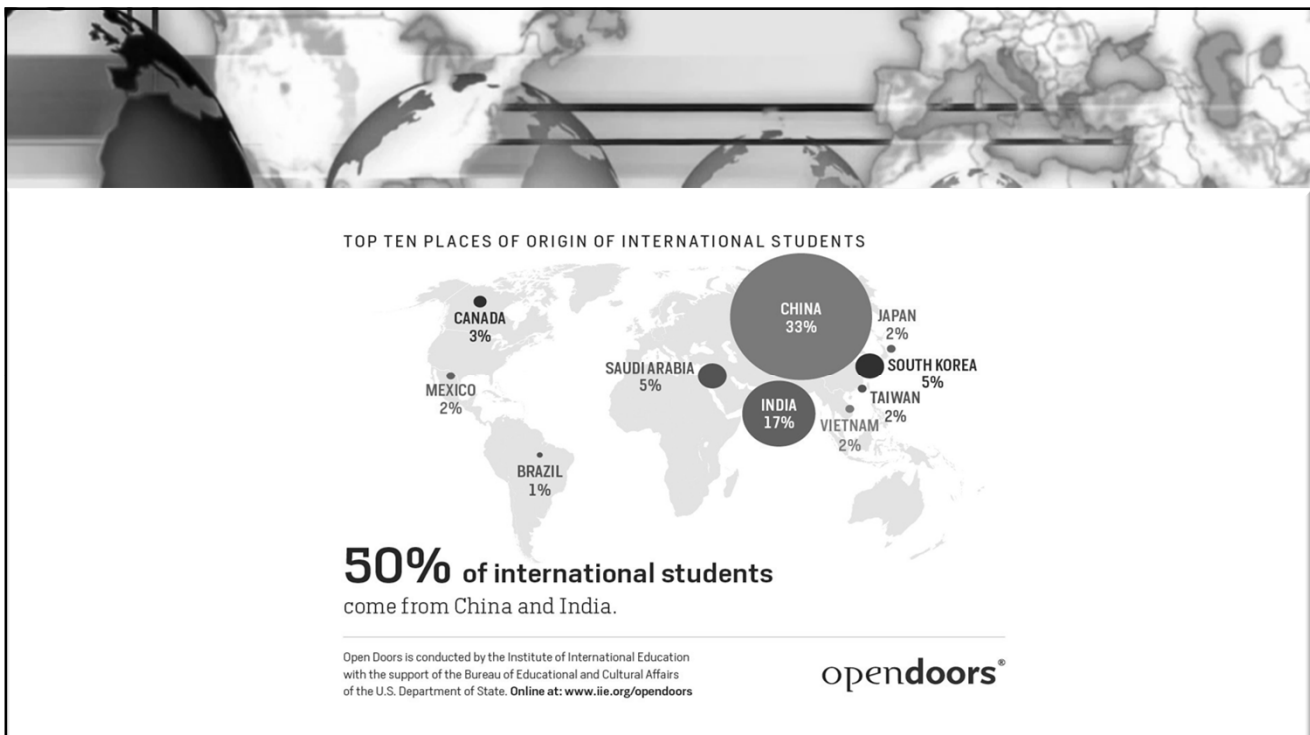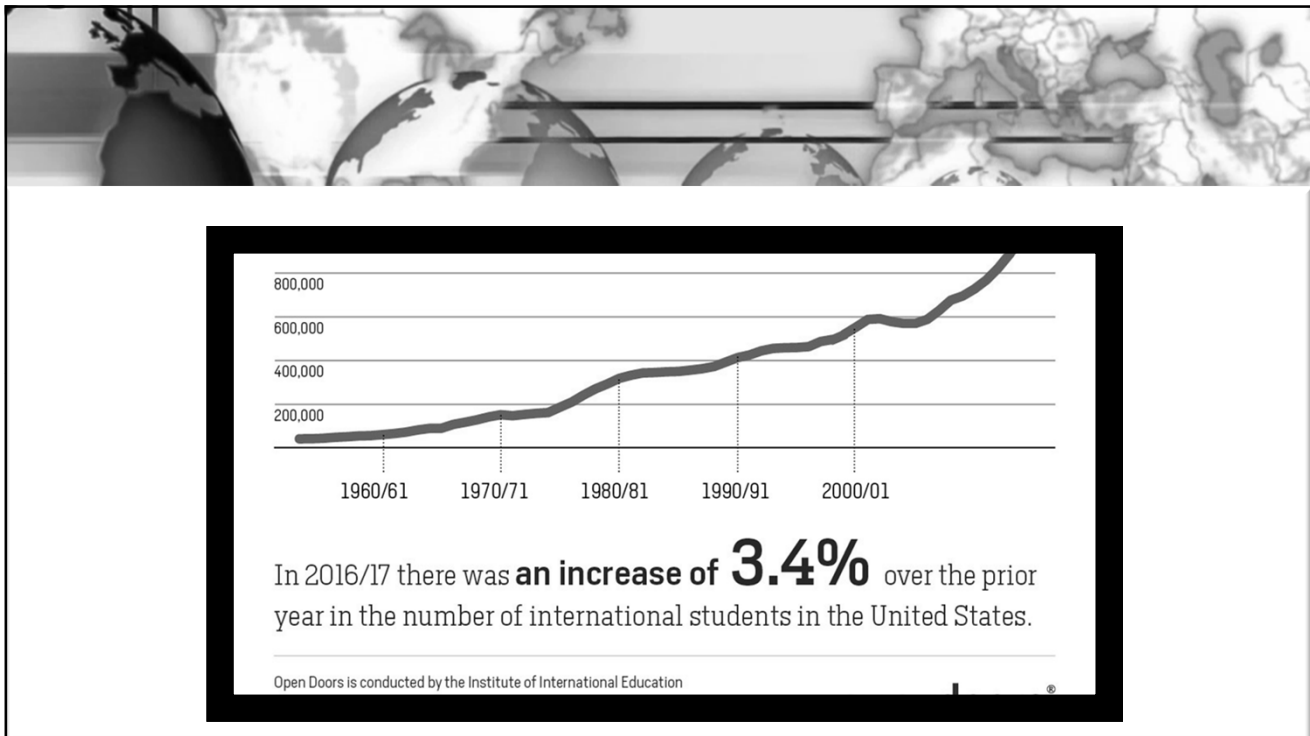Immigration Basics

Compliance Concerns

Hot Topics

Best Practices

1,078,822 international students

studied at U.S. colleges and universities in 2016/17.

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with the support of the Bureau of Educational and Cultural Affairs
of the U.S. Department of State. **Online at: www.iie.org/opendoors**

opendoors®

In 2016/17 there was **an increase of 3.4%** over the prior year in the number of international students in the United States.

Open Doors is conducted by the Institute of International Education

TOP TEN PLACES OF ORIGIN OF INTERNATIONAL STUDENTS

CANADA 3%
MEXICO 2%
BRAZIL 1%
SAUDI ARABIA 5%
CHINA 33%
INDIA 17%
VIETNAM 2%
JAPAN 2%
SOUTH KOREA 5%
TAIWAN 2%

50% of international students come from China and India.

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Ninety-one percent of international students attended schools certified to enroll only F-1 students. The top 10 most popular F-1 programs hosted 10 percent of the entire international student population.

FIGURE 6 – Above are the 10 SEVP-certified schools that host the largest number of F-1 students in the United States.

The continued growth in international students coming to the U.S. for Higher Education had a significant positive economic impact. International students contributed $36.9 billion to the U.S economy. [Source Dept. of Commerce]

Total Contribution
$36.9 billion

Number of Jobs Created or Supported
450,331

Common Acronyms

DHS = Department of Homeland Security
USCIS = U.S. Citizenship & Immigration Services
CBP = Customs & Border Patrol
DOS = Department of State
ICE = Immigration & Customs Enforcement
DOL = Department of Labor
POE = Point of Entry
PDSO/DSO = Principal Designated School Official
RO/ARO = Responsible Officer / Alternate Responsible Officer
LPR = Lawful/Legal Permanent Resident
PR = Permanent Resident
LCA = Labor Condition Application
PW = Prevailing Wage
INA = Immigration and Nationality Act
OPT = Optional Practical Training
FN = Foreign National

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— IMMIGRATION —

Basic Concepts

Immigrant vs. Non-Immigrant

Visa vs. Status

Petitioner vs. Applicant
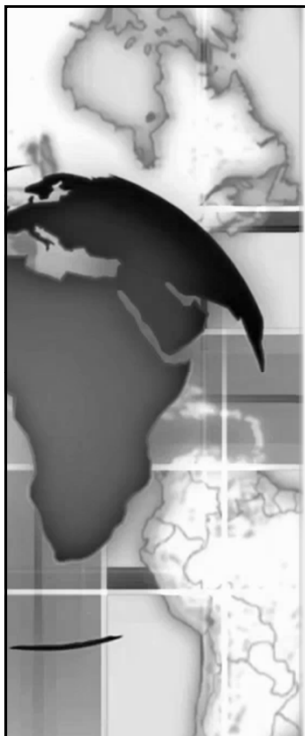
Most Common Visa Types in Higher Education

- F-1
- J-1
- H-1B
- O-1
- Permanent Residence

Where is Immigration Housed in Your Institution

A. Human Resources
B. General Counsel
C. Student Affairs
D. Other

Primary Areas of Concern

- Student Eligibility
- Visa Processing/Procedures
- Visa Categories
- Prevailing Wage Compliance
- Unauthorized Practice of Law
- Form I-9
- E-Verify
- Export Controls

Student / Scholar Issues

Institutional Compliance Oversight	Sponsorship Status Maintenance
- F-1 – Student and Exchange Visitor Program (SEVP), part of the U.S. Department of Homeland Security - J-1 - U.S. Department of State	**F-1 Sponsorship** - Re-Certification required every two years - Certification (I-17) must be updated regarding every programmatic change **J-1 Sponsorship** - Re-Designation required every two years

Student / Scholar Issues

Risk Assessment - Institutional Compliance Oversight	J-1 Designation – High Bar for Programmatic Compliance
▪ Possible Sanctions ▪ Withdrawal of Certification (F) or Designation (J) ▪ How to Assess?	▪ J-1 22CFR Part 62 – Subpart A, 2015 Update

Visa Processing/Procedures
F-1 Program

New I-20s for Incoming F-1 Students	Reporting Requirements for Ongoing F-1 Students
▪ Certain minimum documentation requirements prior to I-20 issuance ▪ Who monitors compliance? How is personnel trained? ▪ How to Assess?	▪ Every student record requires at least one transaction per academic term ▪ Calendar–based reporting ▪ Event-based reporting

Visa Processing/Procedures J-1 Program

New DS-2019s for Incoming J-1 Exchange Visitors	Reporting Requirements for Ongoing J-1 Exchange Visitors
▪ Certain minimum documentation requirements prior to DS-2019 issuance ▪ Who monitors compliance? How is personnel trained?	▪ Monitor activities ▪ Site(s) of Activity ▪ Funding ▪ Cultural Exchange ▪ Employment limitations

Visa Categories

Students

– F-1 or J-1

Scholars

– J-1 or H-1B

Faculty/Staff

- Who decides (beware employee deciding)

- Who prepares the petition

- Who monitors status

- Who tracks expirations?

- Who pays?
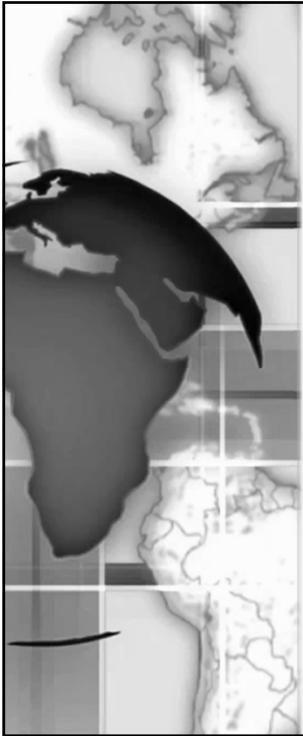
Prevailing Wage

- H-1B visas and Labor Certifications require a Prevailing Wage Determination (PWD)
- Determined by acceptable survey for position and worksite location
- CBA controls (if applicable)
- Must pay the actual or prevailing wage – whichever is higher
- Penalties for failure are:
  - Back pay plus compounded interest
  - Disbarment

Unauthorized Practice of Law

- Federal Regulations
- Who can administer programs / file petitions
  - Attorneys
  - USCIS authorized representatives
  - Employee/s of the Petitioning company
  - PDSO, DSO, RO, ARO
- When does "helping" go too far
- Liability
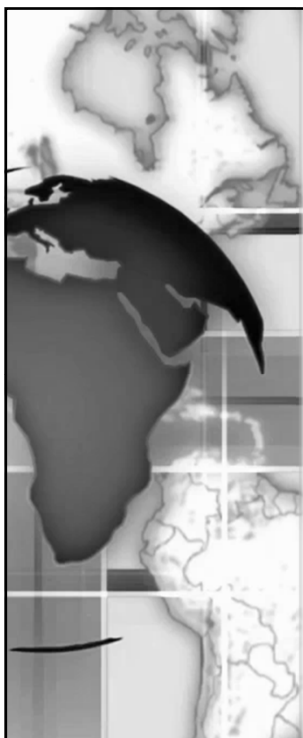
BEST PRACTICES – Student/Scholars

Independent Audit of program

Retain immigration counsel with *higher education* experience

Do not require compliance personnel to wear too many hats

Invest in ongoing professional development of compliance personnel

Invest in appropriate software solutions to facilitate compliance

Ensure that institutional IT resources facilitate appropriate notifications to compliance personnel

Foster ongoing communication between compliance personnel and academic personnel
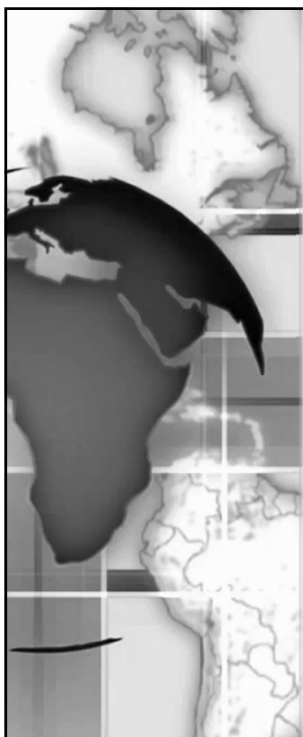
BEST PRACTICES – Student/Scholars

Student Employment

- Emphasize development of appropriate, defensible regulatory interpretation
- F-1 Curricular Practical Training
- F-1 Optional Practical Training
- F-1 Economic Hardship
- F-1 On-campus employment
- J-1 Student Academic Training
- J-1 Student Economic Hardship
- J-1 Student On-campus employment
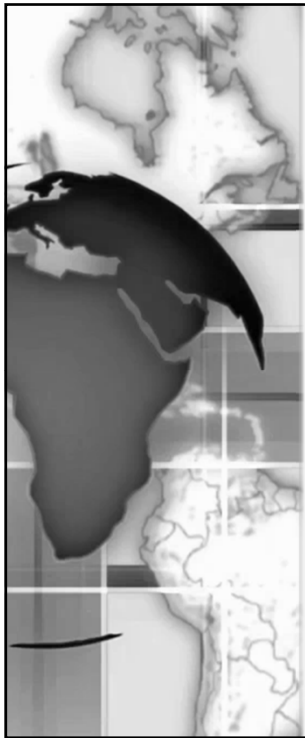
BEST PRACTICES – Faculty / Staff

Centralized Process

User group/working group from Departments and Colleges

Training – workshops

Institutional Policy

Documentation and Guidance
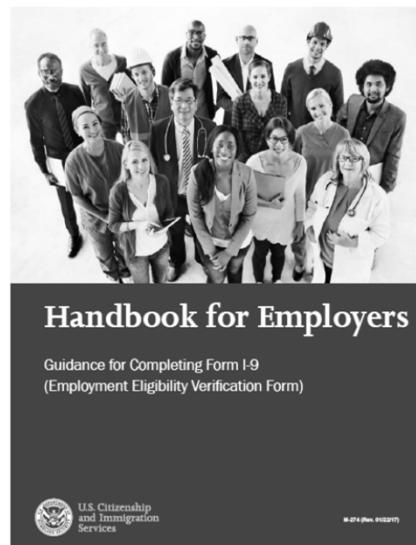
Tracking employee status, job title, hours, salary

Probationary period prior to filing for permanent residency

Retained Counsel

I-9 Compliance

- Increase in Audits
- Gone are the days of the low fine
- Belief that the Form I-9 is simple to complete
  - 69 Page Instruction Manual
  - 15 Pages of additional instructions with the form
- Established Process
  - System for tracking expirations
  - Purging
- Training

Handbook for Employers

Guidance for Completing Form I-9
(Employment Eligibility Verification Form)

U.S. Citizenship
and Immigration
Services

I-9 Compliance

- No Discrimination Allowed Between U.S. Citizens, U.S. Nationals, Permanent Residents, Asylees, Refugees
- NOT allowed to ask "Are you a U.S. Citizen?" or "Do you have a Green Card?"
- NOT allowed to request specific documents or to require "more or different" documents than the minimum required.
- Should ask EVERY applicant (including Faculty) two questions (see handout regarding Hiring Questions)
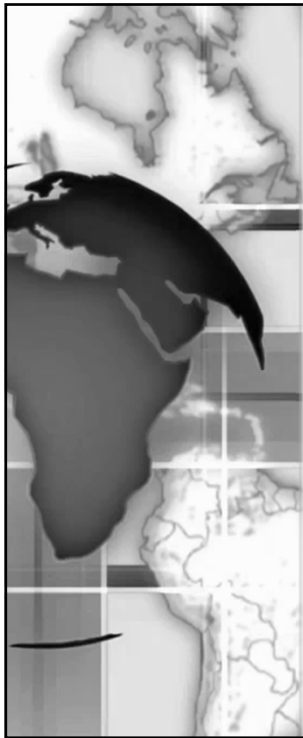
Appropriate Questions

- ✓ Are you legally eligible to work in the U.S.?

- ✓ Will you now or in the future require visa sponsorship for employment?

E-Verify

E-Verify is an Internet-based system, operated by DHS in cooperation with the Social Security Administration, that allows the employer to electronically verify the employment eligibility of new hires.

E-Verify

I
E-Verify
This business uses E-Verify in its hiring practices to achieve a lawful workforce.
www.dhs.gov/E-Verify

BEST PRACTICES – I-9 / E-Verify

Training

Standardized Process

Definitive Ownership of all Components

Centralized Process

Internal External Audits

Reporting

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(This section of the form is required only for H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions. It is not required for any other classifications. Please review the Form I-129 General Filing Instructions before completing this section.)

Select Item Number 1. or Item Number 2. as appropriate. DO NOT select both boxes.

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

1. ☐ A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

2. ☐ A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Export Controls

- Information collected on Form I-129
- Data provided to Department of Commerce
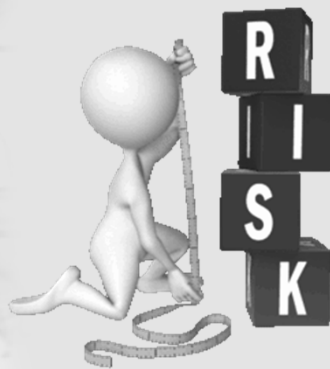- Requires an analysis by knowledgeable staff for each petition

Why Now – Updates and Proposed Changes

10,000 new ICE Officers

Increase in Prevailing Wages

Limitations on OPT

Increased Enforcement

Increased Site Visits
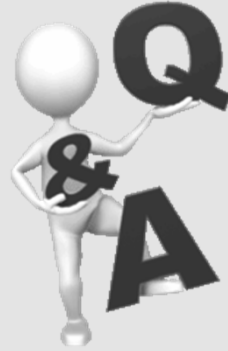
Increased Liability

Increase in Fines/Penalties

Risks of Non-Compliance

Fines

Loss of F-1 Certification

Loss of J-1 Designation

Debarment

Criminal Penalties

Damage to Reputation

Increased Audits

Loss of Funding

Questions? Comments?

We are happy to help you!