

MIE Minutes
Bethel University, St. Paul
21 January 2009

Agenda

1. Welcome from Edee Schulze, Vice President for Student Life, Bethel University
2. Networking Session: Ethical Issues
3. Immigration Update: Scott Borene, Senior Attorney and President of Borene Law Firm
4. SEVIS Headquarters/DHS Update: Bruce Gawtry, University of Minnesota & Macalester College
5. International Student & Scholar Tax Issues with Dr. Gary Carter, Distinguished faculty member at the University of Minnesota Carlson School of Management
6. Announcements

Welcome from Edee Schulze, Vice President for Student Life, Bethel University

- ✓ Edee Schulze, Vice President for Student Life, has worked at Bethel for 21 years in student affairs. During this time she has had meaningful relationships with international students and believes the contribution that international students have in all students' lives and education is immeasurable.

Networking Session: Ethical Issues

- ✓ The board presented ethical issues for members to review and discuss. The issues were developed by NAFSA using its code of ethics as a guide and they are available on the NAFSA website at nafsa.org/about.sec/governance_leadership/ethics_standards/ethics_temp.

Immigration Update

Scott Borene

- ✓ An article in the New York Times on January 12, 2009 explained that federal prosecution of immigration crimes has doubled this year and have siphoned off support for other types of federal cases and overloaded federal resources. This has been demoralizing for federal lawyers who are spending their time dealing with petty immigration crimes instead of big crime. President Obama has said that the immigration system will not be solved by turning illegal immigrants into felons.
- ✓ The website change.gov/agenda/immigration_agenda lays out the Obama/Biden plan for immigration. The lead quote states, "The time to fix our broken immigration system is now... We need stronger enforcement on the border and at the workplace... But for reform to work, we also must respond to what pulls people to America... Where we can reunite families, we should. Where we can bring in more foreign-born workers with the skills our economy needs, we should." The website goes on to point out that politicians have exploited immigration to divide the nation and it sets out five goals for reform. Other sources for information on Obama's views on immigration include his speech on the senate floor on April 3, 2006, his campaign website www.barackobama.com/issues/immigration, and the website www.ontheissues.org/2008/Barack_Obama_Immigration.htm.
- ✓ Scott's impression of President Obama is that he is an experienced constitutional lawyer who does not use words carelessly. Scott believes there were hints about Obama's immigration stance in the inauguration speech including: "hope over fear," which signals a change in tone; "unity of purpose over conflict and discord," signaling a goal of bipartisanship (possibly working with McCain); "all are equal, all are free, and all deserve a chance," which doesn't preclude immigrants and speaks to a good chance for the Dream Act to pass and a legal pathway to citizenship; "they packed up their few worldly positions... in search of a new life," which depicts the US as a country of immigrants; "the question we ask today is not whether government is too big or too small, but whether it works," which signals possible immigration reform; "from the grandest capitals to the small village," which shows that the US is friend of every nation;

"our security emanates from the justness of our cause," could mean fewer ICE raids; and "we are shaped by every language and culture," which signals an openness to all cultures. Comprehensive immigration reform will probably not happen during Obama's first 100 days, but it could happen in May.

- ✓ Senator Ted Kennedy is stepping down from his post on the Immigration Subcommittee and the Senate Judiciary Committee. The Judiciary Committee is important because it makes decisions regarding which laws are passed. Senator Leahy of Vermont is the new Judiciary Committee Chair. Leahy is not as invested in immigration issues as was Kennedy. However, Leahy contacted Scott about writing a forward for his book because he is a great supporter of international education.
- ✓ Michael Chertoff has been replaced by Janet Napolitano as Secretary of Homeland Security. Napolitano supported comprehensive immigration reform, but there was no clue in her testimony as to where she is headed on this issue now.
- ✓ President Bush a last minute attempt through executive order to require federal contractors to use eVerify, but a lawsuit against Michael Chertoff succeeded in pushing this back until February 20. Also, President Obama has signed an order to cease action on such orders until he has made a decision to move forward and rescind Bush's executive orders.
- ✓ Immigration law used to be only federal, but now states have started passing immigration laws. There were more than 1,300 laws introduced in state governments and 205 new laws enacted in 2008. This change was due to the gridlock at the federal level for comprehensive immigration reform.
- ✓ The State Department is recommending that travelers apply now for June 2009 travel documents. Beginning June 1 US citizens will be required to show passports or passport cards in order to re-enter the US from Canada and Mexico. The website www.getyouhome.gov has more information about the new rule.
- ✓ The Department of Homeland Security issued a final rule on December 19 expanding the list of people that must participate in US-VISIT and provide biometrics upon entry into the US. The list now includes permanent residents, individuals entering on immigrant visas, refugees, asylees, and some Canadians (including those on F, H, J, and TN visas). Individuals will not give 10 fingerprints unless they are brought into secondary. Permanent residents with legal problems should be ready to answer questions about this and should not "forget" to say something when crossing the border as this excuse will not work and could cause them problems. For example, Canada strictly enforces a DUI exclusion law and there is a proposal on the table to enforce a DUI exclusion rule for US entry next year. Therefore, all non-citizens must be aware that there are long term consequences to being charged with a DUI.
- ✓ Employers terminating the employment of H-1 visa holders should give the employee thirty days if possible. This minimizes the pain of the termination by allowing the individual time to contact a lawyer and work on maintaining their status. An H-1 visa holder is considered in status as long as they are getting paid, which means the last day of the pay period on the last paycheck. H-1 visa holders whose employment is terminated should make an appointment with a lawyer immediately and start looking for a new job, go back to school, leave the country, and/or apply for a change of status right away. An H-1 who applies for a change of status to F-1 must apply for the next available term (not including summer). The change of status application (I-539) should be delivered to USCIS by the last day of the previous status. It seems as though the California Service Center is allowing a grace period for these individuals, but the Nebraska Service Center is not. In general the Nebraska Service Center seems to have the most strict, "by the book" adjudication process. Termination letters are important as a way to cut liability to the employer and even if the employee resigns should be sent. However, it is important for the person terminated to keep their last pay stub. The moment a person leaves a job she/he is out of status and so she/he should find a new job first.
- ✓ A new version of the I-9 form will be required as of February 2.

- ✓ The Department of Labor has published a new H-1 Labor Condition Application (LCA) form.
- ✓ Citizenship applications should now be sent to the Phoenix service center.
- ✓ New rules are in effect for R-1 visas with regards to sponsorship and application procedures.

SEVIS Headquarters/DHS Update

Bruce Gawtry

- ✓ The job announcement for the 60 Liaison Officer positions throughout country has been delayed by several weeks. It was supposed to go out on January 4. The positions are level GS 13 which means the top pay for the job is \$80,000 or \$90,000. SEVP did pay attention to Bruce's comment paper regarding these positions.
- ✓ Ann Balough, the SEVIS II team leader has stated that SEVIS II development is on schedule. They expect the system to launch in October 2009. There will probably be online training.
- ✓ SEVP is behind by a week or two on recertification. They will start with 400 schools.
- ✓ SEVP is working on implementing the SEVP Response Center soon. The phone number is 703.603.3400 and they will answer all calls and make referrals as needed.
- ✓ SEVP is working on removing old pre-SEVIS language from CFR 213.2, 3, and 4.
- ✓ As the availability of online courses increases (Pawlenty just called for a 25 percent increase of courses offered online) this may become an issue for international students. Immigration is concerned with physical presence, but is reconsidering how much time a student should be required to spend on campus.
- ✓ Larry Minner is concerned with Visa Waiver Program which has expanded to 35 countries. Seven countries were added. As of January 12 travelers will be required to pre-register and it is recommended that they register 72 hours prior to their flight so that there is time to review any problems or issues. If a problem arises the traveler would be required to visit the embassy or consulate to clear it up prior to travel. One concern is that people will not be informed about this new requirement.
- ✓ CBP is still working on the airport kiosks for the departure/exit program. This is an initiative that was built into the Patriot Act. CPB aims to begin using the kiosks in fall 2009 but Bruce is not confident that they will make the deadline.
- ✓ Advisors working with students who have difficult cases such as reinstatement can work with Bruce to contact the CBP office in Grand Portage to get advice about whether or not traveling to Canada is worth the student's time and money.
- ✓ The Canadian immigration website has changed to www.cic.gc.ca.
- ✓ Advisors should reference www.ice.gov/sevis/faqs/redress.html for information on how to fix travel problems.
- ✓ Bruce believes that eVerify is a nation-wide initiative that will inevitably take affect for all employers in the future.

International Student & Scholar Tax Issues with Dr. Gary Carter

- ✓ Gary Carter visited MIE to answer questions about taxes for international students and scholars. His PowerPoint is on the University of Minnesota website at www.iyss.umn.edu/taxes/Nr_orient.htm.
- ✓ Gary Carter said that the best way to help students is to not help them with their tax return, but just provide them with reliable resources.
- ✓ Residency can mean something different for tax purposes than for immigration purposes. Determining whether a student is a resident or non-resident alien for tax purposes can make a big difference in the amount of taxes paid. There is a substantial presence test and rules about who is exempt to help individuals determine residency. See Gary's presentation or contact him with questions.
- ✓ The advantage to filing as a resident versus a non-resident includes the opportunity for residents to file joint and claim exemptions, the child tax credit, and the standard deduction. As a non-resident an individual cannot file joint and they only get one exemption.

- ✓ Legal permanent residents (or Green Card holders) are residents for tax purposes no matter what.
- ✓ Undocumented individuals can be considered residents for tax purposes and thus be required to pay social security and Medicare tax.
- ✓ Naomi Perman asked whether permanent residents who are residing outside the country should continue to file Minnesota state tax returns in order to keep Minnesota resident status. Or are the federal returns sufficient?
- ✓ Treaty benefits also affect taxes. Publication 901 is the US Tax Treaties publication.
- ✓ Household income includes tuition waivers, scholarships, and treaty benefits.
- ✓ The consequence of filing the form 1040 instead of the form 1040NR can be deportation. There is no way for the IRS to know this by looking at the form, but it is a violation of the law. Even if this was not discovered right away, it could cause a problem for an individual who leaves the US and then attempts to return on a different status.
- ✓ CINTAX is a software program that some schools purchase for international students to use to prepare their tax returns. This software is for non-residents only.
- ✓ The University of Minnesota tax orientation session will be held on February 7 and anybody can participate. After this, the university will offer tax workshops for students.
- ✓ The University of Texas at Austin has a good resource for frequently asked questions about taxes and international students at www.utexas.edu/international/taxes/faq.html.
- ✓ An individual who is dependent on someone else is considered a dependent for tax purposes.
- ✓ Institutions that do not offer CINTAX and do not have staff to help students should advise students to reference Gary Carter's website www.thetaxguy.com or the IRS website www.irs.gov. NAFSA also offers some training for international student advisors.

Announcements

- ✓ An MIE member attended the J task force meeting where they discussed Social Security Administration access to view SEVIS II, the SAVE system, a concern about fraud when applicants populate the SEVIS database and fraud, and insurance regulations.
- ✓ Tom Gjersvig's term as Region IV ombudsman is up.
- ✓ Amy VanSurksum is the new MN representative to NAFSA.

Meeting Adjourned

Next Meeting: Thursday, March 12th at Luther Seminary in St. Paul.

Minutes Submitted by:
Annie Gemmell, North Hennepin Community College