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# PIPS - Partners Office for International Professionals and Students

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## Memorandum

To: Hospital Staff  
From: Claire Ayer, Director  
Date: 09/12/2018

### **Best Practices under Dramatically Altered U.S. Immigration Policies**

A series of immigration policy changes set to take effect in the coming weeks will dramatically shift the U.S. immigration landscape. These policies are an extension of the Trump Administration's zero-tolerance policy regarding U.S. immigration. **Do not assume that immigration practices and strategies that have worked in the past will be successful in the current immigration environment.**

Below is a summary of the three (3) most recent policy changes along with best practices to mitigate negative or irreversible immigration consequences.

#### NEW POLICY CHANGES

##### 1. Adjudication Guidance for Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs)

USCIS released new guidance related to issuing RFEs and NOIDs, effective for all applications and petitions filed on or after September 11, 2018. An RFE or NOID is issued when USCIS has a question about a visa request and requires additional information to determine if the applicant is eligible for the requested benefits (i.e., an H-1B change of employer).

The new policy allows the USCIS Adjudicating Officer to use their discretion to deny an application or petition without first issuing an RFE or NOID if the officer determines that the required initial evidence was not submitted or fails to establish eligibility for the benefit. This new policy gives full discretion to the adjudicator to determine whether an RFE or NOID is warranted and does not otherwise address how to handle "innocent mistakes". For example:

- The adjudicating officer does not believe the H-1B request requires a bachelor's degree to perform the job, or the wage is too low and simply denies the case; OR
- An employee is on an O-1 for many years and then an extension is denied as the officer feels the prior record of achievement was a fluke.

At this point, how this will be implemented or if officers will receive more training is unknown. It is anticipated the rate of denials will increase. This memo operating in tandem with the NTA guidance are a troublesome combination.

## 2. Accrual of Unlawful Presence and F, J, and M Nonimmigrants

PIPS covered the ramifications of this policy change in an [earlier memorandum](#) on the topic.

## 3. Notice to Appear Guidance

*PLEASE NOTE: This policy is on hold until the Department of Homeland Security develops operational guidance.*

A Notice to Appear (NTA) is issued to place an individual into deportation proceedings. This new guidance instructs U.S. Citizenship and Immigration Services (USCIS) officers to issue NTAs for a wider range of cases, including cases where an application or petition is denied, and the individual's underlying status has expired while the request was pending.

Below are a few hypothetical examples that highlight this memo's concerning implications:

- Peter, an H-4 (H-1B dependent) visa holder, files for an extension of his visa. He has always been in status. He moves apartments, and properly files a change of address with USCIS (he even gets the receipt). Later, the agency sends a request for evidence to his old address anyway. Peter never receives it. USCIS denies his extension of status for failure to respond. Peter now faces deportation.
- Joe, an H-1B visa holder, changes jobs from Company A to Company B. He quits his current job at Company A after his new H-1B is filed by Company B. After 3 months, his H-1B at Company B is denied. Joe now faces deportation.

Once an NTA is issued, the individual cannot depart the U.S. on their own without triggering a 5-year bar to readmission. Once in deportation proceedings, the foreign national is not guaranteed a lawyer and may be detained. Given the massive backlog in the immigration

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courts, it could take more than a year for an individual to receive an initial court date, during which time that individual would not have employment authorization and would continue accruing unlawful presence (potentially triggering a 3 or 10-year bar from reentering the United States if the removal proceedings are not ultimately dismissed).

### BEST PRACTICES

The broad, sweeping nature of these revised policies requires a defensive, cautious approach to any immigration matter. As a reminder:

- Any visa holder must always have [proof of visa status](#) with him/her.
- Keep copies of all immigration documents.
- Submit H-1B, E-3, or O-1 applications to PIPS 6-7 months before the current visa expires.
- If seeking a green card, file while in H-1B status to keep the underlying H-1B valid.
- When changing H 1B employers, do **not** rely on the H-1B 60-day grace period for protection since it is purely discretionary on the part of USCIS.
- J-1 Exchange Visitors seeking to transfer sponsorship cannot leave their current role until a new DS-2019 is issued by the new sponsoring institution.
- Do not rely solely on the visa stamp or DS-2019 annotations from the consulate to determine whether a J-1 visa is subject to the two-year home residence requirements.
- F-1 students and J-1 Exchange Visitors must alert their Designated School Official (F-1) or Responsible Officer (J-1) to report an address change within 10 days of their move. Other visa holders and permanent residents must file [Form AR-11](#) within 10 days.
- TN is for temporary US employment only. Anyone who has been in the US continuously in TN status may encounter additional scrutiny.
- PIPS may refer you to outside counsel to evaluate/assist in resolving status issues. \*

It is critical to:

- Always print your I-94 Admission Record and those of your dependents after each and every entry into the U.S. and review them for accuracy. If you see errors (name, dates, visa types etc.), contact PIPS and we will provide you with a CBP e-mail address for corrections.

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- Ensure taxes have been filed each year. U.S. Immigration uses tax and pay records to demonstrate visa non-compliance.
  - Pursue only the activities for which your visa was requested.
  - Be cautious about what you post online as anything that can be publicly searched will be reviewed and potentially used by U.S. immigration in a visa or green card application.
  - Review PIPS [travel updates](#) on a regular basis.

**When in doubt, [contact PIPS](#). Do not guess about whether an action is permitted in your current status.**

For employees seeking hospital sponsored or self-filed green cards (marriage, national interest waiver etc.) please contact PIPS for a list of recommended immigration attorneys. In most cases, the attorney will represent both the individual as well as the employer and PIPS reserves the right to determine which law firm can represent a Partners entity. Using reputable local counsel is an important step in the green card process.

Some firms may tout money back guarantees or discounted prices. Be cautious of offers that seem too good to be true. As the wait time for green cards will increase in coming months due to backlogs, it is critical to properly plan timelines and maintain an underlying visa status.

\*please contact PIPS for a recommended attorney list