Navigating Pandemic-related Visa and Other Immigration Challenges Faced by International Students and Postdoctoral Scholars

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A Webinar brought to you by the:
National Postdoctoral Association
American Psychological Association

June 11, 2020

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Agenda

- Review of Regulatory Changes (in response to COVID-19)
- Review of Executive Orders & Presidential Proclamations
- Agency Changes: Known & Unknown
- Common Questions (and their quick answers)
- Tips for Students & Scholars
- Q&A

Review of Regulatory Changes (in response to COVID-19)

- SEVP (through summer)
  - Allows international students/scholars to study and work remotely
  - Allows current international students to maintain status from within their home countries
  - Relaxes regular OPT requirement of a minimum of 20 hours a week of employment (1+ hours meets standards) and allows remote work
- EVP - automatic extensions of DS-2019s for some students/scholars
- USCIS - accepting copy of original signatures
- DOS/CBP/SEVP – allowing use of electronically issued and signed I-20/DS-2019s
- H-1B new process went into effect
- I-9 flexibility for “in person” doc verification

Review of Executive Orders & Presidential Proclamations

- Visa services/consulate closures (Mar 20)
  - Overseas visa processing (including immigrant and non-immigrant) is down 93% since January
  - However, visas are being issued for those working to treat or mitigate the effects of COVID-19
- Travel restrictions
  - P.R. China, excluding Hong Kong & Macau (Jan 31); Iran (Feb 29); European Schengen Area (Mar 11); Ireland/United Kingdom (Mar 14) & Brazil (May 24).
  - Canada/Mexico limited to essential travel only (Mar 24; currently extended to June 22)
- Proclamation Suspending Entry of Chinese Students and Researchers Connected to PRC “Military-Civil Fusion Strategy“ (May 29)

Review of Executive Orders & Presidential Proclamations

- Limit on Permanent Resident processing (Apr 22)
  - This pertains to “Immigrant Visa Processing” at US Embassies and Consulates
  - Utilizing 212(f) of the INA which pertains to entry of aliens “detrimental to the United States”. However, the administration is utilizing a “negative impact upon the labor market” as opposed to national security or public health.
- Does NOT (currently) affect immigrant visa applications (I-485 Adjustment of Status) here in the US
- Potential to be expanded to H-1B

Agency Changes: Known & Unknown

- Known:
  - USCIS resuming premium processing & Field Offices have reopened
    - USCIS have NOT closed completely during the pandemic. Service Centers have continued processing throughout COVID-19
  - Certain Employment Based Green Card applications have had the final interview requirement “waived”
  - Social Security Offices closed for in-person services

- Unknown:
  - SEVP plans for Fall
  - OPT restrictions
  - Electronic I-20 acceptance at other agencies: DMV, SSA, etc

Common Questions (and their Quick Answers)

Question: I cannot apply for my visa because of consulate closures. However, I have a valid tourist visa or qualify for the tourist visa waiver program. Should I come to the US on a tourist visa and file to change status?

Answer: No! This can be considered visa fraud, which has serious consequences. USCIS considers your intent for entering the US on a tourist visa when adjudicating your Change of Status application.

Common Questions (and their Quick Answers)

Question: I cannot get my visa in time to start my program. What should I do?

Answer: Contact your sponsor/school to discuss a deferral of your program start date. If you are a student, you may be able to begin taking courses towards your degree online.

Common Questions (and their Quick Answers)

Question: Has OPT processing been affected by COVID-19? How about H-1B?

Answer: Service centers have processed all applications as usual. You can find processing times at https://egov.uscis.gov/processing-times/. Consider the job market at this time when deciding to apply. Make sure you are prepared to be a good job candidate!

Question: If my CIP code is not on the STEM list, can I apply for a STEM OPT extension?

Answer: No. Please also understand that your DSO cannot change your CIP code to make you eligible. The CIP code on your I-20 must match the CIP code used by your school's Registrar's office when defining the program with the Department of Education.

Common Questions (and their Quick Answers)

Question: I am on OPT but have been furloughed. Does this count as unemployment?

Answer: The use of the word furlough varies greatly – it can mean "unpaid leave" or it can mean "laid off." Unpaid leave does not accrue unemployment days; being laid off does. It's important to gain clarification in this regard. For the duration of the COVID-19 emergency, SEVP considering 1+ hours a week as employed. Don't forget about self-employment & volunteering during post-completion OPT!

For H-1B positions be careful about "Benching" – please review any changes to your employment situation with your sponsor

Common Questions (and their Quick Answers)

Question: I have filed for a change of status, but my current visa status will expire soon and I cannot extend it. What should I do?

Answer: If a "timely" and "appropriate" request for a **change** of status has been filed, then, in most cases, an applicant can remain in the US pending the adjudication of the requested change of status. An applicant wishing to change to F-1/J-1 must maintain their underlying status through the application period and may need to file a "bridge" application to tourist.

If someone is here on the ESTA/Visa Waiver program and their status is expiring, then they can ask for "Satisfactory Departure."

Common Questions (and their Quick Answers)

Question: What are my options after OPT?

Answer: Generally speaking, in academia, an appropriate "next step" for a foreign national researcher – especially in the context of the "postdoctoral experience" would be to utilize the J1 Research Scholar Visa (requires change of status; 5-9 months).

Another valid option would be the H-1B. Academia is exempt from the H1B Cap!

Please remember that policies and procedures are different in terms of titles/positions and you need to talk to the people who matter – i.e. the international office, who can provide guidance as to policy/procedure at a specific university or academic institution.

Be careful about "jumping" to industry as this can potentially limit next non-immigrant visa options (lack of J1 availability and industry H1Bs are subject to the cap).

Common Questions (and their Quick Answers)

Question: Many airlines are not operating or are cancelling flights due to the pandemic. Does this mean I am relieved of my responsibility to leave by my grace period?

Answer: Unfortunately, no. You are still required to follow the rules of your 30/60-day grace period. No automatic extensions have been given at this time.

- Depart the US (remember: don't have to go home). Contact your embassy if having trouble leaving. Keep proof of cancelled flights.
- Transfer to maintain status or apply for OPT/Academic Training (students)
- Extend status (if possible) or file a change of status (i.e. to tourist)

Common Questions (and their Quick Answers)

Question: Can I file a National Interest Waiver application?

Answer: Yes – Firstly (caveat), it is important to note that the strength of an applicant's case is based on their overall professional credentials and attributes, as well as the extent of their scholarly and scientific contributions to the field.

However, these applications, which are self-petitioned and do not require an offer of permanent employment can be filed without regard to the geographic location of the applicant. Therefore, if you were forced to depart the US (lack of funding/lost position) you could file the application, and once approved you could (ultimately) return to the US with a Green Card.

Standard of adjudication set by a Court Case "Matter of Dhanasar" NOT this Administration.

Common Questions (and their Quick Answers)

GREAT Question: What can institutions do to advocate for students/scholars? What can students/scholars do to help each other?

Answer:

- **Institutions:** Contact your congressmen! Tell them how these changes impact your school and your community. Ask them to support pathways for education and employment of students and scholars. Connect students to resources/possible job opportunities.
- Students/Scholars: Make voices heard! Provide data to your institutions. Seek help when needed and support one another.

Tips for Students and Scholars

- Don’t panic!
  - Go to the proper source for advising - your DSO/RO
  - Be careful about “friends and forums”
  - Review the law and regulations with a professional to explore all options available to you.
- Explore extensions, if possible, or change of status (I-539)
  - Know that interagency communication and understanding isn't always great or stock messages are being used (example, F-1s being told from embassies to file I-539s)
- Moving forward, be ready for processing delays and increased fees – prepare early (budgetary/funding issues within USCIS)
- Be careful about “unauthorized” activity
- Legal, administrative remedies and recourse

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Please frame your question in a way that will be helpful to the entire audience. Note that we cannot answer case-specific questions or predict the future. Thank you!

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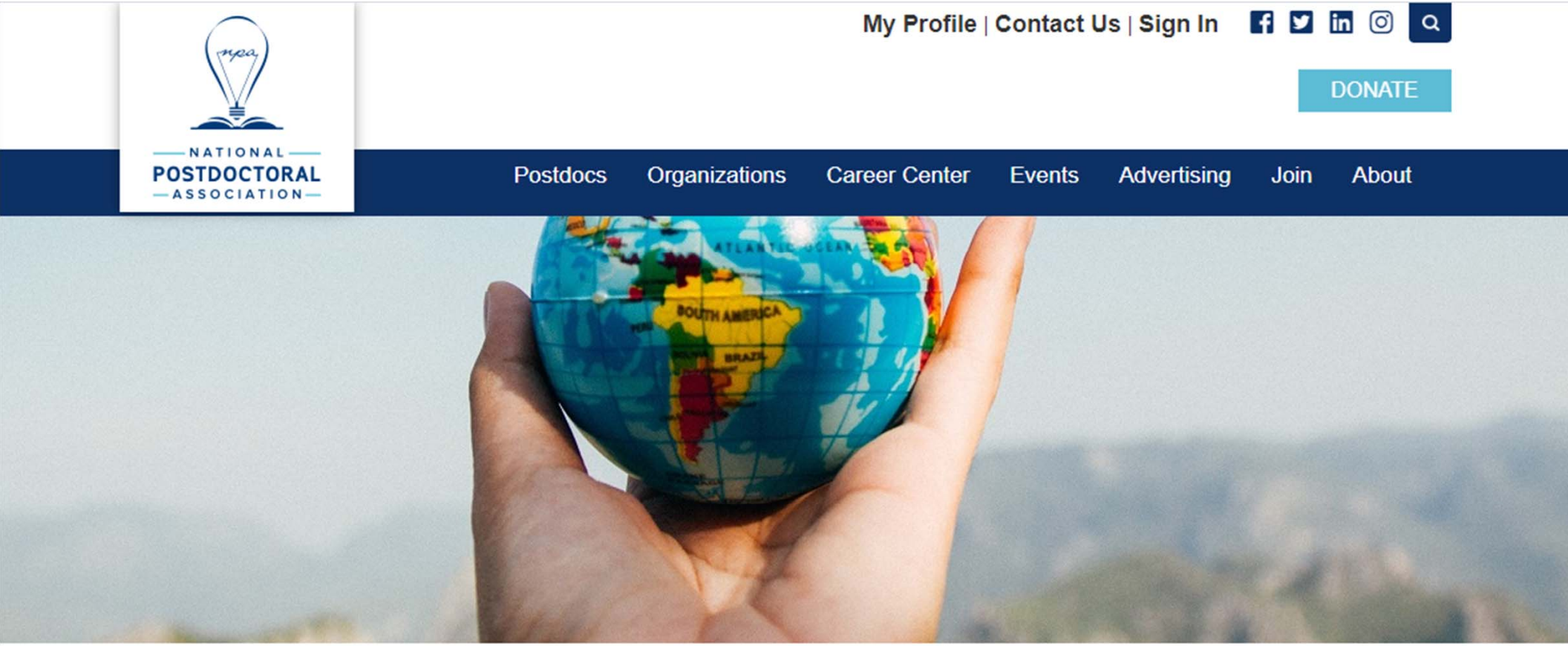

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