

No Cookie-Cutter

Instituting an immigration policy on U.S. college and university campuses is more important than ever. Whether it's working with international students, or more frequently, international scholars and staff members, knowing how to deal with immigration issues as they arise and knowing when to seek the advice of immigration attorneys beyond campus walls is now part of every international student adviser's job. **BY DAVID TOBENKIN**



HERE WAS A TIME

when it could be as simple as, well, a chocolate chip cookie to expedite federal agency processing of foreign scholar applications for teaching or research-related immigration status.

"Years ago, when I was at the University of Oregon, we'd take the work permits to the Portland, Oregon immigration office for processing, we'd take a container of homemade chocolate chip cookies, and we'd go through the permit applications," says Peter Briggs, now director of the Office of International Students and Scholars (ISSO) at Michigan State University. "Our primary contact at the immigration office just loved those chocolate chip cookies. I thought I was practicing good advocacy for our students and scholars, as we created an efficient moment to process quite a few applications in a day."

Alas, managing immigration matters is no longer so simple. The growing numbers of international faculty and workforces at many institutions are generating both increased ISSO workloads and opportunities for errors. Federal paperwork and processing requirements have multiplied; in particular, changes to the Department of Labor (DOL) Program Electronic Review Management (PERM) labor certification system mean that a single bad immigration petition can now jeopardize a school's entire permanent residency application program.

Like many ISSO directors, Briggs says that attaining proper immigration status for scholars and students and assuring institutional compliance is an increasingly time-consuming and serious business.

"It's much more formal now—now you do what you have to do in a very, very professional matter," Briggs says.

Immigration lawyers say that is the right attitude, given that other security challenges haven't distracted federal regulators from scrutinizing institutional compliance with federal immigration laws.

"Despite the challenges posed by 9/11, immigration officials haven't said 'we'll forgive minor immigration issues'—if anything, there is much stricter enforcement, which makes it more important to have formalized policies to make sure schools comply with all aspects of the law," says H. Ronald Klasko, managing partner at Philadelphia- and New York-based Klasko, Rulon, Stock & Seltzer, LLP and former president of the American Immigration Lawyers Association.

Foreign scholars, who can be defined as aliens engaged in scholarly activity—teaching, conducting research, or gathering material for an institution or their own academic and professional advancement, but not enrolled in any formal academic program—are a vital resource of talent, drive, and intellect on U.S. campuses. But ISSO directors and the immigration lawyers who assist them say that

finding the proper balance between universities' intellectual and humanitarian urges to assist immigrants and the demands and costs such assistance poses requires careful analysis of their institutions' needs, resources, and philosophies; development of policies to provide a baseline for conduct; and fair administration of such standards.

Developing an Institutional Policy

While many Ivy League and top-tier research institutions have had immigration policies for decades, their use is spreading to a wider base of institutions. MSU's Briggs says that the danger of noncompliance with federal law, particularly the danger of substandard work by external counsel retained by immigrant scholars and the implementation of the PERM system, led his institution to start work 18 months ago on formal policies for scholar immigration issues, which he says are being finalized.

With 1,250 foreign scholars in residence at any one point in time, MSU is a significant international player. But even campuses with small international presences should have immigration policies and procedures, ISSO directors and external counsel say.

"I think any university doing more than one or two cases per year should have a policy regarding how to handle immigration," says Stephen W. Yale-Loehr, who teaches immigration law at Cornell

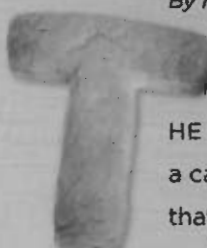
Law School and practices at Miller Mayer, LLP in Ithaca, N.Y. "It's good for the institution and for international faculty hiring. Because immigration law is so complex, they also need to review their policy periodically to make sure it reflects the institution's academic mission and changes in immigration law."

At the most basic level, experts identify a variety of considerations that such policies, and related procedural approaches toward immigration issues, should contain:

- They should embody the institution's philosophy toward employment (and, possibly, student) immigration issues involving the institution.
- They should ensure consistent handling of the issues.
- They should address two particular types of legal risk: the institution's obligation to ensure compliance with applicable state and federal law and the need to minimize exposure to lawsuits premised upon improper actions or inaction by the university.
- They should determine what aspects of implementation can be handled on campus and which should be pursued by outside counsel.
- For those matters handled on campus, they should determine which university offices and departments will participate and how, and the nature of that participation.
- They should ensure that immigration processing efforts are efficient and that costs and fees are correctly charged or allocated.

How to Work With an Immigration Lawyer

By Helene Robertson



THE DECISION TO OUTSOURCE a case (or cases) does not mean that the university can just sit back and wait for results. The employer is liable for the content of employment-based petitions filed with the government. Here is a list of top 10 tips for working with an attorney:

1 Choose an immigration attorney with relevant expertise. Public institutions may be required to use specific lawyers. Immigration attorneys can specialize in different areas of immigration law. Get to know the attorney and his or her staff, including paralegals; understand and respect their roles.

2 Communicate applicable institutional policies with the attorney: official signatories; institutional limitations on sponsorship for certain types of employment-based petitions; who needs to vet the petition/application prior to filing, whom is to be billed, etc.

3 Clearly understand the strategic plan for obtaining the immigration benefit and the estimated timeframe involved, particularly if the case is complex and involves multiple filings. Understand the employer's role in the process and in any applicable on-going obligations. Understand the scope of the representation agreement and the work that needs to be done. Who does the attorney represent? Understand the pricing structure of the agreement (flat fee versus hourly rate) and the payment schedule. Are there extra costs such as copy and mail charges? Who pays? Is assembly of employer's retention documents (e.g., LCA inspection files and PERM packets) included in the agreement or must the employer assemble these?



Briggs



Klasko



Yale-Loehr

"The purpose of these policies is threefold," says Catheryn Cotten, director of Duke University's International Office. "First we must ensure external compliance with government agency and accreditation/licensing rules, and ensure internal compliance with institutional policies. Second, we must manage risk and liability by making sure qualified staff are managing petitions, applications, and services. And finally, we must do what is best for the business processes of the school by attracting the most qualified faculty and researchers and supporting and helping those who need immigration assistance."

Formulating an Approach

ISSO directors and immigration lawyers say that the first step in developing an institutional policy is developing a philosophy regarding what they believe their institution's role should be in addressing staff and faculty immigration issues:

4 Understand the concept of dual representation. Regardless of who pays legal fees, for employment-based petitions, attorneys represent both the employer and the employee. Know that it may be necessary to seek separate representation if the employer-employee relationship were to change (e.g., layoff or termination of employment) or if the goals of the two parties are not in sync.

5 Review the petition to ensure that it is consistent with institutional standards and accurately reflects the position and the terms of employment. Ensure compliance with any posting requirements, assemble any required inspection files, and ensure compliance with on-going obligations after approval, particularly for H-1B and PERM filings. Seek guidance/clarification from the attorney, if necessary.

6 Marshal paperwork through institutional hierarchy. Respond to requests for information in a timely manner.

7 Obtain copies of the entire employment-based petition filed with immigration. If the attorney refuses to provide copies of the entire filing, including attorney cover letters, consider changing representation.

8 Monitor the progress on the case. Seek case updates on long-pending cases at regular intervals, but don't stalk the attorney. Monitor expiration dates associated with immigration status and/or work permission. Understand which filings extend work permission and which don't.

9 Understand and appreciate the concept of unauthorized practice of law. The role of the campus-based immigration practitioner is limited to protecting the interests of the institution by representing the employer pro se in filings with the government. Rely on the attorney to advise the foreign national regarding his or her status.


10 Consult with University General Counsel regarding concerns about the attorney's representation. Terminate representation for unethical or illegal practices.

HELENE ROBERTSON is the director of Office of International Student and Scholar Services at The Catholic University of America.

"Different international offices have different philosophies," Klasko says. "Some say, 'we are here to do everything possible to help the individual achieve their immigration goals and to act as advocates.' At the other end, some view themselves as deputy government officials: 'We are not a stepping stone for creating permanent residents; we just want to make sure the individual is in compliance with the law. I think it's important to decide policy-level issues like that in advance so that every time an issue comes up you don't have ad hoc decisionmaking.'"

Some say that they prefer to leave the policy informal to keep it flexible. "We chose to address this at the subpolicy level," says Marjory Gooding, director of international offices at the California Institution of Technology. "A policy is very fixed because it goes through the governance of an institution. Once it's at the policy level, it's hard to change. I started five years ago and we wrote a subpolicy when I got here that was not approved by the governance of the institution and codified."

On the other hand, some ISSO directors say that ISSOs with weak support from top administration and strong pressure from academic departments might be better advised to seek policy approval by the top decision-making body at the university, as this will convey a sanctity that may deter constant pressures for exceptions to the policy.



Colleges or universities that concentrate on teaching, rather than research, may have fewer permanent residence applications, while a leading research organization may have heavy demand, particularly if it has excellent research facilities or program reputations. Certain fields, such as agricultural research and medical research, tend to have particularly great needs.

Assessing the Need

In addition to overall philosophy, the types of immigration policies and procedures that are appropriate are driven by the organizational structure of immigration and other administrative functions on campus, the number of international students and scholars, available resources, and the type of immigration services provided.

There are several basic areas that institutional policies typically address. One is outlining the treatment that different categories of university employees will receive when seeking either temporary immigration status or permanent residency. Foreign scholars can be divided into tenure-track faculty, post-doctorate scholars and researchers, and non-tenure track staff, including some foreign nationals with extraordinary non-academic technical skills, though some tend to place the latter two categories into one bucket. The level of service provided to these groups tends to vary based on their category.

Needs for immigration services also vary. Colleges or universities that concentrate on teaching, rather than research, may have fewer permanent residence applications, while a leading research organization may have heavy demand, particularly if it has excellent research facilities or program reputations. Certain fields, such as agricultural research and medical research, tend to have particularly great needs.

Scholars Seeking Permanent Residency

For those seeking permanent residency, also known as a "green card," their employment category is often particularly important. Generally, institutions will assist tenure-track academics to secure permanent residency through a green card based on employment. However, the treatment of post-docs, other research scholars, and staff differs at different universities.

"The question with respect to green cards is: who do you sponsor?" says Caltech's Gooding, whose institution sponsors roughly 40 green card cases a year. "One answer is just tenure-track faculty. Another answer is everyone with a certain title. Another is anyone whom important faculty members want. Another is 'anything you want me to do.' Students, though, would never qualify. The questions are at the staff level. Everyone will do green cards for faculty, but there are policy questions for what do you do for staff. Would they do a green card for a staff engineer? Why would you? Well, who do you think builds those fancy telescopes, anyway? The nature of the work they will perform often dictates policy."

The tenure-track/other employee divide reflects in part the arduous nature of achieving employment-based permanent residence for all but the most distinguished faculty, with application processing times running two to three years much of the time.

For scholars seeking permanent residency, and as an alternative to the DOL PERM system and its requirement to test the U.S. labor market, academic institutions routinely examine the scholars' eligibility for one of two employment-based classifications for priority workers: Aliens of Extraordinary Ability (EB-1-1) and Outstanding Professors and Researchers (EB-1-2). Both classifications require extensive documentation of the scholar's national or international standing and original contributions to the field and their significant professional publications, association membership, authorship, and similar achievements. Once assembled, these petitions closely resemble applications submitted by faculty for tenure. Thus, they are generally useful only for scholars with significant publication and research records.

For those who cannot qualify under these categories, a school may seek to support teaching faculty and researchers under an EB-2 classification, which includes aliens who are "members of the professions holding advanced degrees or their equivalent" and aliens "who because of their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States." However, this form of application is much more laborious for the ISSO: it usually requires a determination by the Department of Labor that no available U.S. worker is able, willing, and qualified for the position (or, in the case of teaching faculty, the employer must prove that the alien is the "best" qualified candidate for the job), and that the employment of the alien will not adversely affect the wages and working conditions of similarly situated U.S. workers.

This process presents its own set of challenges for institutions. "We have experienced problems with labor certifications for our tenure-track faculty," says Ivor Emmanuel, director of service for international students and scholars at the University of California, Berkeley. "Some cases have been stuck in a backlog center in Dallas, Texas, and we have no idea when we will have cases adjudicated. In other Department of Labor certification filing cases, we have received denials due to errors on the part of the Department of Labor. In these cases we have filed appeals, and we are waiting on the decisions."

In March 2005 the DOL instituted a major change in permanent residency petition processing when it instituted its new PERM system

to certify that there are no minimally qualified U.S. workers for college and university positions. The good news for institutions was that the DOL set a goal for making decisions on the electronically filed PERM applications at 45 to 60 days (instead of many months or years under the prior processes). The bad news was that the consequences of petition denial in some circumstances could be dire.

"Many institutions say 'let the foreign nationals get their own lawyers and pay their own fees and we'll sign what we need to sign,'" Klasko says. "That's more of an issue under the PERM because now there are penalties that go beyond individual employees. Under the old system, if a case is denied, it's denied and end of story. Under the new system, a denial could result in sanctions against the university that would apply not just to one employee but to future cases, too. Specifically, the DOL can impose supervised recruitment, which means for a period of a year or two an institution can't do petition processing on their own and everything has to be run through the Labor Department, which is much slower and much more cumbersome."

Confronted by the demands of such certifications and the danger posed by mistakes, many institutions choose to closely guard their sponsorship.

"The default position is we don't sponsor staff," says James Fine, director of the Office of International Programs at the University of Pennsylvania. "But there are exceptions, which are granted for highly skilled positions such as research specialists. For staff with advanced degrees, the exception is usually granted."

Some schools institute more-liberal sponsorship policies as a competitive edge in seeking out and retaining faculty.

"We have more-liberal sponsorship policies than some other institutions, which could assist us in attracting the best pool of applicants for faculty and research positions," says Jeanne Kelley, director of Boston University's International Students and Scholars Office.

Scholars Not Seeking Permanent Residency

With respect to scholars not seeking permanent residency, the major bone of contention is what type of employment status they should petition to receive. The two primary forms are the J-1 exchange visitor category, administered by the U.S. Department of State to invite international students and scholars to the U.S. on a temporary basis in the interest of cultural, scientific, and educational exchange, and the H-1B temporary worker status, an employment-based nonimmigrant status established by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) to temporarily employ international employees with specialized training.

"The issue for institutions is 'should we do J's for post-docs or H's for post-docs,'" Gooding says. "Both have advantages and disadvantages."

Since J-1 regulations prohibit the issuance of J-1 documents for tenure-track faculty positions, institutions instead will almost always file an H-1B petition with USCIS for these employees. The H-1B status petition requires aliens to be engaged in professional

employment within a temporary framework, have the requisite professional training and experience to assume a professional position with an employer, and to fill a position that requires the degree that is commonly recognized as being necessary for entry into the profession. The appeal of this status, which allows stays in the United

States for an initial three-year period with extensions possible for three more years, is that the scholar does not need to establish ties to his home country and is not subject to a home residency requirement necessitating a return to his or her country of origin before applying for permanent residency. The H-1B also facilitates foreign travel and does not limit sponsorship to approved organizations. The downside is a far greater level of initial effort and expense required for the H-1B petition approval than for J-1s. Boston University estimates the average total processing time from when the ISSO receives the paperwork for a J-1 application to when a scholar may be able to enter the U.S. to commence academic activities is approximately 40 days, compared to the 180-210 days for an H-1B with regular processing because of USCIS delays.

For non-tenure-track applicants, the J-1 status has become relatively more desirable in recent years as its duration has been extended from a maximum of three to five years for research scholars and non-tenure-track instructors, lecturers, and visiting professors. Many J-1s, however,



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are subject to a two-year residency requirement. Those J-1s who are subject to this requirement and who wish to stay beyond their allotted time must file applications to waive the home residency requirement, which at many universities constitutes a significant workload.

Though obtaining J-1 status is generally less complicated than H-1 status, a new complication for processing J-1 and F-1 visas is the new USCIS Student and Exchange Visitor Information System (SEVIS), whereby academic institutions participate in the creation of electronic records and documentation used to support the exchange and study-related visa applications of students and scholars.

The petition process also is particularly difficult for students and scholars subjected to MANTIS security clearance, a requirement for students and scholars who study and work in scientific fields listed on the government's Technology Alert List of subject areas presenting the scholars with access to sensitive technologies.

Other Issues

Other scholar-related issues may or may not be contained within an institutional policy. One function sometimes housed within the ISSO is institutional policies related to compliance with Form I-9 employment eligibility verification.

"The policy question for I-9 immigration documents—employment verification—is whether or not that function should be in the international office," says Caltech's Gooding. "There are pros and cons both ways. On some campuses, no one else on campus may know about immigration issues, so there would be a better chance at compliance. The cons are that you have the person who created the I-20 or DS-2019 Form examining the same document they created in a different role. If someone presents a valid driver's license and Social Security card that is unrestricted, I have to accept it. But if I know he's a non-citizen, I know he shouldn't have documents and I, therefore, know too much."

Interaction between straight immigration law and related types of law also challenges institutions, Yale-Loehr says: "For example, there are questions when foreign immigrants come in and are paid honoraria for a speech or a concert at a university that involve both tax and immigration issues. We'll work with tax counsel for the university to make sure the two types of requirements are harmonized."

Immigration Services Structure

ISSO and university staffing, mission, and expertise all affect the formation of institutional policy on immigration issues. At the largest institutions with extensive foreign scholar and student presences, a comprehensive approach led by the ISSO is not uncommon.

"Harvard now has 3,500 international students and more than 3,000 international scholars in its various schools and centers," says Sharon Ladd, director of Harvard University's Harvard International Office (HIO). "Although the University is very decentralized, the HIO is one centralized office that provides visa and immigration services for all of Harvard's international students and scholars. We developed a policy many years ago for green card sponsorship, and

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TO FIND MORE information on developing institutional policies, see NAFSA's Professional Practice Workshop participant manuals for "Filing Academic H-1B Petitions" and "Pathways to Permanent Residency." In addition, NAFSA's Professional Practice Workshop "Pathways to Permanent Residency" (a workshop given annually at the NAFSA national conference) contains a chapter devoted to "Developing an Institutional Policy on Lawful Permanent Residence Services." Information on the workshop can be found at www.nafsa.org/residency

we provide that sponsorship to tenured or tenure-track faculty and high-level researchers who have long-term renewable appointments. We generally do not sponsor staff, but exceptions can be made for highly skilled professionals. Our visa sponsorship policies further the institution's research and teaching mission and at the same time reinforce its goals as a major employer in the Boston area."

With respect to the role of ISSOs, often the expertise of ISSO director and staff can result in expanded duties.

"Before I came to Catholic University, filing of H-1B petitions was farmed out to individual outside attorneys and our Office of General Counsel (OGC) then reviewed their work," says Helene Robertson, director of international students and scholars services at Catholic University of America. "Because I have expertise in that area, it's slowly coming in house to the International Office to make sure that it's all being done consistently."

University general counsel's offices also vary greatly in general resources and, even in large offices, in their degree of immigration issue expertise. At many institutions, they render legal opinions with respect to the compliance and liability implications of action or inaction by the university with respect to immigration matters. Sometimes they perform the visa application process themselves. Many ISSO directors say that it is important that ISSOs without their own legal resources consult either qualified general counsel or external counsel to ensure that they are not engaging in unauthorized practice of law.

"I have a great general counsel's office," Robertson says. "They are more knowledgeable than most OGCs regarding immigration and they are very accessible—we talk at least once per day. Our OGC serves as a resource for us when we have legal questions we need help

with. If the hiring department came to us and said, 'we want to bring them in and not pay them salary and instead give them a stipend of some sort or travel reimbursement and bring them in on a tourist visa,' then before we formally say yes or no we review it with OGC so a legal decision is arrived at. As we are not lawyers, we don't want to make final legal decisions that affect the university. But many OGC offices at other institutions don't deal with immigration issues on a day-to-day basis and there might be another office responsible for it."



Robertson

Other ISSO directors note that human resources, payroll offices, and other administrative offices, as well as academic departments, also often have a role in monitoring employee and student immigration status and actions. A lack of knowledge about immigration issues at any of those units can spell problems, even if the ISSO is a strong one.

The Department of Labor, for example, audited Indiana University in 2003 after an employee involved in a personnel dispute with an academic department on campus asked to see what the department thought to be her confidential personnel file, says Christopher Viers, associate dean for international programs at Indiana University, director of international services at Indiana Bloomington. In fact, says Viers, the employee was actually asking to see the H-1B Public Inspection file related to her petition, which she had a right to access.

"The department consulted with a number of other units on campus about her request, resulting in a delay in providing the employee access to the information requested," Viers says. "When the department figured out that the request involved an immigration matter, I received a call and within minutes the employee received access. But as a result of the initial delay in appropriately recognizing the request, a complaint was filed with the Department of Labor for failure to provide access to the public inspection file in a timely manner, and an audit resulted."

It was not a pleasant process, Viers says, estimating that the audit involved "several hundred hours" of staff time over 18 months and workdays that on occasion stretched into the early morning hours to respond to rush requests by DOL staff. While no fines or penalties resulted, he says that the school was required to pay certain back wages to employees in cases where actual hours on payroll documents did not true up with what was declared in DOL filings.

"We had incredible support from our colleagues across campus in responding to the audit," Viers says. "From my perspective, it is critically important that offices handling matters of this nature don't do so in isolation—when effectively responding to an audit or investigation suddenly becomes your number one priority, having to foster new working relationships and explain the basic requirements of these matters to your colleagues in legal counsel, human resources, and academic affairs is not the ideal place to begin."



Viers

The Role of Outside Counsel

Supplementing, and sometimes supplanting, the scholar petition roles of ISSOs, general counsels' offices, and academic departments are external, nonuniversity counsel.

"The nature of the role of external counsel depends on each college," says Yale-Loehr.

"Many larger colleges do processing for their own faculty. Smaller colleges don't do that and instead rely on us to file temporary or green card residency. Many colleges also like immigration lawyers to come on campus and give talks to international students and scholars about visa options to remain in the U.S. and work after they graduate. That's outside the scope of what many international offices do."

ISSO directors say that institutions must align the role of outside counsel with their immigration policies and guard against overdelegation.

"It is institutions that should determine policies as to the extent of authority they give attorneys," says Penny Rosser, director of the International Scholar's Office at the Massachusetts Institute of Technology. "If they are going to delegate or retain counsel for outside petitions, they need clear guidelines as far as the types of cases they will have attorneys do for them, the types of persons on

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campus they will and will not be done for, and the extent of authority they will grant attorneys in processing applications. It's important to be clear because you don't want an attorney sponsoring a case that you wouldn't ordinarily sponsor."

Many institutions will only allow applicants to use attorneys from an approved list of practitioners for any immigration issues that relate to the institution. Sometimes more than one type of attorney must be consulted, and ISSO directors should be aware that even the order in which they are retained can impact the applicant's chances, Gooding says: "If someone is on the wrong side of the law, we introduce them to an immigration attorney who refers them to a criminal defense attorney. It's not the other way around because a criminal defense attorney might not know there are immigration issues related to plea bargain. A plea bargain might win the criminal case but expose them to deportation or result in denial of their residency petition if it admitted certain facts."

Outside counsels also almost always handle nonemployment-premised applications that are generally beyond the scope of international office responsibilities, such as permanent residency petitions based on the national interest waiver category.

ISSOs and external counsels say that the level and methodology of charges for outside counsel legal work tends to be consistent within a given geographic area.

Klasko says that most immigration attorneys charge a fixed, per-case fee for handling the visa or green card case of university personnel. He says that some universities prefer to have outside counsel available on a regular basis to answer questions regarding legal, liability, and policy issues. For this advice, universities may pay a monthly retainer (for example, \$600 per month for as much legal advice as is needed) or an **hourly rate**. Where advice is needed on a more sporadic basis, outside counsel who have ongoing relationships with universities may also provide the advice pro bono as a service to the university.

There are some ways for institutions to save money. Practitioners say that discounts are sometimes provided for volume work. In addition, discounts may be provided in cases where an institution prepares extensive background information on visa or permanent residency candidates to expedite a firm's work.

Tough Issues and Impending Challenges

Two new wrinkles in scholar immigration issues have emerged. One is Premium Processing Service (PPS) on H-1B visa cases, which is being expanded gradually from H-1B and O-1 visa cases to certain types of green card cases. Under this program, if institutions pay the government a \$1,000 extra fee, the institution can receive an answer in 15 days rather than four months. However, deciding which individuals should receive this support can be very complex, depend on timing issues, and sometimes present conflicts between the interests of institutions and scholar applicants.

"There are huge institutional policy issues about it, such as who pays and under what conditions is it legal," Caltech's Gooding says. "Does the institution always pay or is there discretion if it is solely for the benefit of the scholar? These are Department of Labor issues, which are more slippery than immigration ones."

A similar issue is posed by the federal right of status portability, which since the year 2000 has allowed H-1B and green card status portability when an immigrant moves between institutions, enabling employees to file a new petition and work for the new institution while he or she awaits a federal agency decision. Such actions, however, can increase the danger to the institution and the immigrant of abrupt termination if the new petition is denied.

Klasko says that there is significant interplay between the premium processing and the portability issues: "If I'm an H-1B employee and I'm working at one university and hired by a new university, they can file a new petition for me and when they file I can start working. Some say, 'We don't want you to work here until it is approved. We don't want to use portability except when you get it approved.' Sometimes we can solve all portability issues by instead using premium processing. We'll pay \$1,000 and get an approval notice within 15 days or less. I evaluate what are the chances are that a scholar's petition will be denied to determine which approach to recommend."

One possible event that could result in significant changes to institutions' immigration services to their scholars is enactment of comprehensive federal immigration reform legislation pending in Congress.

"Depending on what is agreed to, the legislation could affect universities in a variety of ways," Yale-Loehr says. "Both houses' bills change employment verification requirements to ensure compliance with the law and make changes to various immigration categories. If the legislation is enacted and becomes law, colleges will have to get up to speed on changes, as they will affect recruiting and hiring."

Still, despite the bureaucratic and legislative challenges described above, ISSO officers say perhaps their greatest challenge is the frequent struggle by them and their staffs to find the right balance between a natural desire to help and their obligations to the institution.

"It's very easy to cross a line," CUA's Robertson says. "A student comes in and says, 'Oh, we just got married, can you look at papers and make sure they're right' and the employee gets caught up in the joy for them and wants to be helpful. We have to draw the line because in being helpful, they are exposing the university to a liability if something goes wrong. We want to make sure that everyone knows where the line is and if someone goes beyond the line, at least it is clear that they are not acting in accordance with institutional policy." **IE**

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