

# The Troubling Issues Facing International Students Today

Lea R. Hanson & Jill Zambito

*As the number of international students study in the United States (U.S.) increase, it is important that college administrators become knowledgeable of laws and policies affecting this student population (Ward, 2002). International students studying in the U.S. are encountering stricter application and screening processes since the events of September 11, 2001 (2002). Due to these difficult procedures, both international students and their campus advisors may face challenging experiences both before and after the arrival of international students at U.S. institutions with the application process and during their study experience with national tracking systems.*

Today, international students face many obstacles when seeking opportunities to study in the U.S. Some of the most troubling issues are the difficulty obtaining student visas and the intense amount of tracking and monitoring of international students. According to Ward (2002),

Many of the policies and practices that have evolved over the last two decades have been the subject of careful examination and sustained discussion -- the process by which international students and exchange visitors enter the country and are monitored once they have arrived is no exception. (para. 10).

Although many of these policies have been in place for a number of years, guidelines have become stricter in the past decade with the conception of the Student and Exchange Visitor Information System (SEVIS), a web based database and tracking system.

## History

Universities and colleges rely heavily on international students for income and as resources (Ward, 2002). Because these students have become such an integral part of U.S. campuses, it is essential that educators are informed about legislation regarding this student population. National associations exist with the mission to assist international students' educators in this process. International students and exchange visitor programs are enormously beneficial to our country, and their contribution to the American economy is not the only, nor the most impactful way that they are beneficial. According to Ward, "International students and visitors... bring knowledge and skills to U.S. classrooms, laboratories and businesses" (para. 3). International students also give campuses a unique level of diversity that cannot be simulated any other way, they

create and promote long-term linkages between institutions in the U.S. and abroad, and they dramatically increase the knowledge and skills of domestic workforces (2002). Terry Hartle, a Senior Vice President of the American Council on Education (2002), recently explained, "International students increase the knowledge and skills of the U.S. workforce, boost appreciation for democracy and market based economics, give future world leaders a firsthand experience of Americans and America, and generate billions of dollars of income every year" (para. 1). Even President George W. Bush has said, "The United States benefits greatly from international students who study in our country" (Hartle, 2002, para.7). Also, the government explained that half of the world leaders who agreed to support the war on terrorism first came to this country as an international student or exchange visitor (2002).

College educators are advised to have an understanding of countless laws. According to the National Association of Foreign Student Advisors (NAFSA), an Association of International Educators (1997), "It is naïve and dangerous to assume that education abroad, advising and program administration exist in a vacuum, apart from the legal context of U.S. higher education" (p. 351). For both U.S. students and international students, it is necessary to acknowledge that overseas programs and students who work with them are legally bound by the same guidelines as domestic programs (1997).

### **Legislation and Legal Issues Regarding International Students**

While administrators are aware of the risks and legal issues regarding international students, the subject has not been given much attention until recently. This neglect could have contributed to international educators elaborating about the positive aspects of academic exchange programs. Also, there have been few legal cases documented regarding international student issues due to institutional reasons (NAFSA, 1997), such as negative public relations and other experiences that administrators do not wish to advertise.

International student educators and administrators have demanding jobs when working with international students. According to NAFSA, international educators should keep abreast of the basic concepts dealing with numerous doctrines and statutes. Due to the lengthy number of laws and regulations international educators need to comprehend, their duty appears to be a difficult task. They must be aware of not only domestic rules,

but also some international legislation; the laws of other countries (foreign laws) and international law have become increasingly important to postsecondary education (Kaplin & Lee, 1997). These understandings may come into play, for instance, when the institution sends faculty members or students on trips to foreign countries, or engages in business transactions with companies or institutions in foreign countries, or seeks to establish educational programs in foreign countries.

### **Visa Application and Acceptance**

Many U.S. institutions seek international student participation, yet it is becoming more difficult to apply and be accepted to participate at a U.S. university (Ward, 2002). The process of obtaining a student visa can be lengthy and strenuous, as explained in a press conference regarding immigration studies and foreign students (Borjas, 2002, June 25). An international student who wishes to study in the U.S. begins the process by applying for admission to an institution. The student must then be admitted by an Immigration and Naturalization Service (INS)-approved university where he or she must enroll as a full-time student. When a school accepts the student, the institution must send him or her an I-20 Form, an INS required document consisting of demographical information; this form is needed in order for the student to be approved for a visa. Upon receiving the I-20, the student must take this form to a local consulate where it is reviewed and the student is interviewed. Here, the consulate ultimately decides whether or not to grant the student visa (Borjas, 2002).

Since the events of September 11, 2001, the student visa application process has become more strenuous and the likelihood of receiving a visa has decreased. Because one of the hijackers involved with the September 11th terrorists' attack was granted access to the U.S. through a student visa, it has become increasingly difficult for international students to obtain student visas to the U.S. (Toosi, 2002, August 21). Hence, many innocent students are being denied the opportunity to fulfill a dream of studying in the U.S. Some reasons for denial of an international student include the student's academic performance and preparation, as well as their ability to pay for the education, but the most frequent reason for students being denied is the perceived idea that international students have intentions of remaining in the United States indefinitely (Borjas, 2002, June 25).

Although it is sometimes just as difficult for an international person to get a tourist visa, it is usually less difficult for them to obtain a student visa. Student visas can appear quite attractive for terrorists and other mal-intended visitors because a student visa is a means for young, unmarried persons to enter into the U.S. fairly easy (Borjas, 2002, June 25). Upon entering the U.S., this same person would be in an environment where he or she would also have a good chance of finding an American spouse, which has been the case for many terrorists; this is due to the fact that there is a large population of unmarried, young people in the U.S (2002). Borjas (2002) stated that one of the objectives of the al Qaeda is "to recruit more terrorists who are American citizens, which gives the network easier access to the U.S. - more freedom of movement." In other words, marrying an American citizen guarantees the potential terrorist the opportunity to obtain a green card and ultimately citizenship. 5).

### ***International Student Demographics***

Despite the recent difficulty in obtaining a visa, foreign students came to America post-September 11 in record numbers, according to an annual survey of international education (Borjas, 2002). These students came primarily to community colleges; in 1980, 155,000 student visas were granted. In 2000, that number soared to 315,000 student visas granted (2002). Although international students benefit universities by paying out-of-state tuition, their presence is sometimes costly as schools must constantly adapt to the needs of this population.

Like domestic students, many international students rely on financial assistance for college; educational programs with high international student enrollment require increased resources including faculty and funding for assistantships, teaching and research assistantships, laboratory positions and facilities maintenance (Borjas, 2002). More specifically, changes have had to occur at the graduate level: in recent years, international students have earned 49% of all the PhD's in engineering, 35% in physical sciences, and 23% in social science (2002, June 25).

Students wishing to study in the U.S. have an even more difficult process depending on the country from which they apply. The U.S. is focusing on students from Algeria, Egypt, Iran, Iraq, Saudi Arabia, and Yemen with increased monitoring (Borjas, 2002). While these security concerns may be valid, it is important that admissions officers,

international educators, and consulate representatives continue to allow qualified non-threatening students the opportunity to study in the U.S.

As illustrated by John Liebhardt in the Oregon Daily (2002, June 10, p. 12),

"International educators and student groups fear a new set of proposed visa restrictions could be just the beginning of a harsher climate that makes it extremely difficult for the more than 500,000 international students who study in the U.S." Because of this heightened difficulty, international students who do obtain a student visa often receive approval at the last minute, therefore, administrators are sometimes left unsure of the number of international student enrollment until they show up for class. In addition to this difficult process, Students with B-1/B-2 visas, visitor visas that allow for minimal visitation periods, cannot enroll in a U.S. institution until their status is changed to an F-1 student visa.

The process of obtaining a student visa is also becoming much longer as a result of heightened security measures. Therefore, students are going elsewhere to receive an education including Australia, New Zealand, South Africa, Germany, and Canada (Hartle, 2002, September 9). This worries admissions officers because U.S. institutions depend on international students in numerous ways, including the important perspectives they bring about other cultures as well as their view on the American culture (Dunbar, 2002, September 16).

### ***The Tracking Process***

For many international students and their allies, the level to which they are tracked by the government is disturbing (Arnone, 2002). The government does this tracking via SEVIS; the goals of this Internet based system is for the government to "keep tabs on which applicants colleges accept, the dates on which they enter and leave the U.S., and what they are doing while in the country" (p. 33). Other information that must be reported to the INS through SEVIS includes whether or not a foreign student has arrived on campus and is actually attending classes, the student's major, and general directory information.

In reporting information to SEVIS, the institution is not only responsible for updating the student's profile each term or semester, but also every time the student changes his or her major, changes or drops courses, transfers, drops out, or changes residences. If

this information is not reported in a timely manner (generally 10 days after a change of information occurs) the student is considered to be "out of status and can face penalties including arrest and deportation" (Arnone, 2002, p. 33).

According to Ward (2002), "For as long as colleges and universities and exchange visitors' programs have been sponsoring international students and exchange visitors, we have collected information and maintained information about those individuals" (para. 11). However, SEVIS will replace a paper-based system in which higher education institutions send carbon copies of forms to a contractor hired by the INS to enter data by hand into a computer database. In other words, the requirement to report the information is not new, but the way that educational institutions must report the information is. For the personnel on campuses, the frustrations lie in having to convert data from paper to online, or from a university database to SEVIS, which is time consuming.

There are two sides to the issue of tracking international students. On one side there are international students and their allies who feel as though this policy is a form of discrimination. On the other side are those who support the INS requirements who believe that because international students are visitors in this country and because terrorists have been found to be in the U.S. illegally via student visas, international students are not subject to the same privileges as U.S. citizens. Legally, the former concern might illustrate an unfair way of singling out individuals based solely on their ethnicity, which is discrimination and therefore a possible violation of international students' right to equal protection under Title VI. According to Kaplin and Lee (1997), Title VI of the Civil Rights Act of 1964 declares, "No person in the U.S. shall, on the ground of race, color or national origin, be excluded for participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (p. 545). Note that Title VI "reaches no further than the Fourteenth Amendment's equal protection clause, which prohibits only intentional discrimination" (Kaplin & Lee, p. 576); the type of discrimination the SEVIS tracking system seems to create is indeed intentional.

Equal protection is also guaranteed under the Fourteenth Amendment (Kaplin & Lee, 1997). Although discrimination claims related to higher education most often come into

play in regard to admissions procedures, these fundamental rights are important to consider in all arenas of higher education. Discrimination is not only the denial of a service to a person, such as the denial of admission to a university; it can also result when one has received supplementary treatment or attention, such as the extra supervision and tracking that an international student is given.

Any person who is legally in the U.S. is privileged to basic constitutional rights. Violating a person's constitutional rights of equal protection is also known as a breach of Section 1983 depending on the situation and the type of institution the student attends (public or private). In order for this alleged discrimination to not be a violation of due process, and therefore a Section 1983 claim, it would have to be proven that there needs to be a reasonable basis for the action. In other words, there is a reasonable belief that any given international student might be a threat to the U.S.; this is something that policymakers have considered. Borjas (2002) indicated that tracking international students is not only appropriate but absolutely necessary. He stated, "[A] lack of supervision makes it very easy for foreign students to stay in the U.S. illegally after they complete their studies." He further indicated, "Around ten percent of the three million people amnestied [in the 1980's] were persons with temporary visas - many of them foreign students" (para. 20). People who support this viewpoint would generally believe that international students view a student visa as a "ticket in to the country" (Borjas, para. 22). There appears to be a certain amount of paranoia that exists among these skeptics; many believe that in many countries there is a black market for visas to the U.S. which could jeopardize the safety of Americans.

Tancredo (2002) provided a rebuttal to Borjas' argument inferring that the information was exaggerated. He stated, "Immigration is a good thing... for the nation, it provides a diversity that is healthy and that is economically beneficial to the nation" (para. 62). He proceeded to explain:

...when you get a better look at the true economics of immigration, general immigration, you come away with the same sort of feeling that there is a mistake [for the paranoid views of skeptics]; that we've been making a generalization that we have applied to immigration and specifically to the student visa part that is untrue. (para. 63)

In other words, making generalizations about our international students instills an amount of fear for little reason; it is too large an assumption. This question ultimately remains: is the tracking of international students reasonable?

According to Snow & Aurand (2002), The Family Educational Rights and Privacy Act (FERPA) states that "any institution of post-secondary education which received funds under Department of Education programs may not disclose personally identifiable information [that was obtained from] a student's educational records without the student's prior written consent except under limited circumstances" (p. 4.3). Some of the information that is reported to SEVIS would be considered directory information. "Information contained in an educational record of a student which would not generally be considered harmful or an invasion of privacy if disclosed," (p. 4.4) such as the student's name, address, and major. Other information would not be considered directory information, such as which courses the student is enrolled in and the last time was that the student switched classes or changed majors. There are ten exceptions to FERPA; four of which are directly related to the government and/or its related officials, which include releasing information to:

...authorized representatives of (i) the Comptroller General of the U.S., (ii) the Secretary, (iii) an administrative head of an educational agency, or (iv) State educational authorities, ...state and local officials or authorities to whom such information is specifically required to be reported or disclosed, ...in connection with an emergency, to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons, ...to the entity of persons in a Federal grand jury subpoena or any other subpoena issued for a law enforcement purpose. (p. 4.5-4.6)

It may be easy to understand how the tracking of international students' records may fall under one or more of these categories, especially since the terrorist attacks on September 11, 2001. It is conceivable that an international student may be a threat to the safety of others; however, it is also unfortunate that the actions of a few lead to a generalization about all international students. Overall, although the release of these records is most likely not a violation of FERPA, the reasoning behind why the policies are within the guidelines of the Act is most confusing to those that oppose the fact that the information is released.

Although the actual releasing of the records has been deemed to be within the law, the fact that "the new provisions permit a university to disclose education records, without the students' consent or knowledge, to the Attorney General or his/her designee in response to an ex parte court order" is what causes feelings of reservation in many higher education administrators and personnel (Jordan, 2002, p. 49). An ex parte order is one that is issued by the government with no consent from the party or person in question. Because the fundamental and constitutional right to procedural due process in the U.S. includes the right to receive adequate notification, the fact that international students' educational records are made accessible to others without their consent or knowledge is difficult for many to understand. The way the INS justifies the fact that these orders are ex parte is through their requirement of most foreign students to sign an I-20 form which "includes a consent provision allowing for the disclosure of information to the INS" (Snow & Aurand, 2002, p. 4.6). However, the Doctrine of Unconstitutional Conditions illustrates that no person can ask another to waive their constitutional rights. Some would argue that the requirement of a student to sign a form that also infers consent, such as that of an I-20 form, is the same as requiring the student to waive their right to give consent, which is unconstitutional.

#### **Concerns for Student Affairs Professionals**

The individual student is not the only one who is at risk of having their rights violated; student affairs professionals and other university personnel must be aware of their rights to have fair warning. Representatives from a number of institutions stated that the time frame deemed by the INS is unreasonable (Arnone, 2002). Although the final version of the SEVIS program has yet to be released at this time, institutions were facing a deadline of January 30, 2003 to have all international students reported to the government. A number of institutions have reported that they may face dilemmas in meeting this deadline (2002). It is also believed by some that communication between the INS and higher education institutions is lacking. According to Arnone (2002), "Colleges blame many of the problems with SEVIS on a lack of information from the INS, particularly in communicating what it is they need to have ready for January 30" (p. 33). Finally, the training sessions the INS was planning to provide for schools have recently been eliminated, which has caused further frustration for the institutions.

Although many institutions would prefer to link their existing databases to SEVIS in order to input information, student information actually has to be put into the system one by one in order to avoid data processing problems. This is not only time-consuming, but it also requires funding. Many institutions are finding they must hire temporary staff in order to enter data fast enough.

### **Recommendations for the Government**

It is the authors' recommendation that while some of the heightened security measures remain, others should undergo modification. Effective ways to address these issues include the examination and possible modification of the visa application process; providing education to international students, their educators, and university administration; and examining whether or not the students are truly experiencing discrimination.

It is necessary that the U.S. maintain the difficult visa application process to ensure a sense of safety in the U.S., to encourage serious students to apply, and to discourage those who would abuse the student visa. Currently, student visas are granted to international students, and a renewal is not necessary for a number of years. Perhaps the student visa renewal process should be annual. A continual renewal process might provide visiting students with a greater sense of responsibility to the U.S. government as well as the institution they attend as these students would have to renew their visas in order to enroll each academic year. This way, in order to remain a student, international students would have to provide demographic information about themselves to receive their visa in the first place, as well as each time they renew it. Therefore, the student is providing the information rather than the university and the government is still able to monitor student activities.

Finally, it would be helpful to reexamine the guidelines that address the process of applying and receiving a student visa. For example, instead of receiving a visa before applying to attend a university, the international student could be given a temporary visa. For this recommendation, temporary is interpreted to be 90 days or less.

Therefore, if the student enrolls in and actually attends a university, his or her visa is made active for one year. However, if the student chooses to enroll in school, but

chooses not to attend classes, his or her temporary expires and they would not be permitted to stay in the U.S.

### ***Recommendations for Student Affairs Professionals***

International administrators and educators need the support and financial backing from institutions to become knowledgeable of international and domestic laws and regulations. This is necessary in order to better serve international students and secure the safety of the institution. Because of the benefits international students bring to campus, institutions must provide special services for international students wishing to or currently participating in international study/exchange programs. This must be done in order to promote future international study and cultural exchanges.

It is essential that international students are not only educated on the policies of the U.S., but also that they are provided with networking and social opportunities that are aimed at making their experience in the U.S. a positive one. Many institutions require first year students to enroll in a seminar that introduces them to university policies, involvement opportunities, and college life in general. Having a similar opportunity for international students who plan on studying in the U.S. their entire college career would be wise to implement. These courses could include educational sessions, how to abide by domestic laws, obtaining a driver's license, and other practical skills as well. Today, most colleges and universities are extremely student focused and are increasingly concerned with the academic and emotional development of its students; offering a course that introduces international students to life in the U.S. as well as life on a particular college campus could be worthwhile and helpful.

### **Conclusion**

Since multiculturalism and global thinking are such important aspects of society and education, it is becoming increasingly popular to participate in study abroad and international partnership programs. Because of this, international administrators and educators find themselves needing to become aware of both international and domestic laws, a demanding and arduous task. Professionals working in the field of student affairs need to understand this complicated issue from all possible viewpoints; the process the international student goes through to obtain a student visa, the concerns of

the government regarding terrorism and illegal aliens, and most importantly, the needs of the international students once they are on campus.

### References

Althen, G. (1995). *The Handbook of Foreign Student Advising*. Yarmouth: Massachusetts, Intercultural Press Incorporated.

Arnone, M. (2002, September 6). Colleges expect the worst in preparing for the new system to track foreign students. *The Chronicle of Higher Education*, p. 33.

Borjas, G. (2002, June 25). *Press Conference Speech*. Center for Immigration Foreign Students Immigration Program. Washington, DC.

Dunbar, E. (2002, September 16). Foreign students at U. Minnesota find difficulty in getting visas. *Minnesota Daily*, 5.

Hartle, T. (2002, September 15). Are foreign students worth it? Is the international open door at colleges and universities good or bad for America? American will be the loser if we limit students. *The Boston Globe*. E12.

Hoffa, W., & Pearson, J. (1997) *NAFSA's Guide to Education Abroad for Advisers and Administrators*. Library of Congress Cataloging-in-Publication Data

Jordan, T.L. (2002). *The U.S. constitution and fascinating facts about it*. Naperville, IL: Oak Hill Publishing.

Kaplin, W. A., Lee, B. A. (1997). *A Legal Guide for Student Affairs Professionals*. San Francisco, CA: Jossey-Bass Inc.

Liebhardt, J. (2002, June 10). New international students may face more scrutiny from INS. *Oregon Daily Emerald*, 12.

Rodriguez, E. (2002, May 17). Foreign students learn specifics of new rules prompted by September 11. *The Austin American Statesman*. B1.

Snow, B., & Aurand, D. (2002). University Text: HE 677 Law in Student Affairs. *Colorado State University*.

Tancredo, T. (2002, June 25). *Press Conference Speech*. Center for immigration foreign students immigration program. Washington, DC.

Toosi, N. (2002, August, 21). Foreign students still waiting for visas; scrutiny stricter now, Wisconsin educators say. *Milwaukee Journal Sentinel*. O1A.

Ward, D. (2002, September 24). *Tracking international students*. Capitol Hill Hearing Testimony delivered to the Committee of House Education and the Workforce Subcommittees on 21st Century Competitiveness and Select Education. Copyright 2002 eMediaMillWorks, Inc.

---

Lea Hanson ('03) currently works as a Graduate Advisor in the Office of Greek Life at Colorado State University and is a graduate student in the Student Affairs in Higher Education program.

Jill Zambito ('03) currently works as a Program Advisor in Campus Activities at Colorado State University and is a graduate student in the Student Affairs in Higher Education program.