

FOREWORD
WELCOMING FOREIGN ACADEMICS AND RESEARCHERS
*by Senator Patrick Leahy**

A vibrant foreign student and scholar program benefits both the United States and those students and researchers from around the world who choose to come here. American students discover international perspectives with which they might otherwise never come in contact. Foreign students and faculty gain a deeper understanding of the United States, often correcting misimpressions they may have of our country.

Indeed, the interaction between foreign students and scholars and Americans can engender greater tolerance and openness between different cultures. In an age when the threat of terrorism is ever-present, it is only natural that Americans want to ensure that those who seek to visit us do not wish us harm. But we need a balanced approach that allows us to maintain an open door to those who wish to learn more about us and teach us more about their own societies. The benefits of such a balanced approach will be significant and long-lasting.

One need only look at the foreign leaders who have been educated in the United States—from King Abdullah of Jordan to U.N. Secretary General Kofi Annan to President Vicenté Fox of Mexico—to understand the mutual importance that our nation’s system of higher education has for our nation and for the world. These leaders have an understanding of our country and our society that they would otherwise never have obtained, and their experiences surely help us to work more closely with them. As former U.S. Secretary of Education Richard W. Riley has written, “These student ambassadors, who make lasting friendships in America and better understand our values and way of life, are the future world leaders with whom we will sit down to forge alliances around the globe.”

The benefits of international programs are also immense for educational institutions themselves. The presence of foreign students and faculty allows colleges and universities to provide the first-rate education that has made the American higher education system the envy of the world. For example, the science and engineering programs at many of our universities contain high percentages of foreign students and faculty, without whom at least some of these programs would cease to exist. Changes in the processing of visa applications for science students and scholars caused particularly severe delays, which are only now beginning to diminish. Continuing to streamline that process should be a priority.

In light of the benefits that foreign students and faculty bring to the United States, we need to do more to ensure that the security measures we have taken over the last decade—and particularly over the three years since the attacks of 9/11—are efficiently achieving our security goals. We need to make sure that the SEVIS student tracking system operates smoothly and promptly so that prospective students do not face such long delays that they pursue their studies elsewhere. We need to provide the funding the State Department needs to have enough consular officers to implement our new policy to interview every visa applicant. And, perhaps most importantly, the officials of our government, from top to bottom, must present a welcoming face and always make it clear that the United States remains open and enthusiastic about inviting students and scholars from around the world. That would truly be in our national interest.

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FOREWORD
‘SECURE BORDERS–OPEN DOORS’: SLOGAN OR POLICY?
*by Marlene Johnson**

Our growing distress at the plight of America’s image has a common refrain: “If only they knew the real America.” If only they could experience the generosity of the American spirit, see our commitment to tolerance and free speech, and witness the workings of our democracy. Ironically, over the past two years we have been sabotaging one of the best tools for dispelling misperceptions about this country and making friends: educational exchanges.

This state of affairs cannot continue. Leaders at the highest levels of our government recognize that the problems in our visa processing system—which have contributed to declines in applications by international students to top university programs, and in delays for foreign scholars and scientists seeking to enter the United States—can and must be fixed. The Secretaries of State and of Homeland Security, as well as their senior staffs, have articulated what is at stake for the United States: failing to attract the world’s best and brightest to our academic institutions is not only bad for our universities and our economy but has long-term national security implications. We simply cannot afford to be complacent about our role in educating the world’s future leaders.

To turn the State Department’s “Secure Borders–Open Doors” slogan into reality, the Secretaries of State and Homeland Security must articulate an operational, balanced visa policy. A speech is not a policy. A policy must guide the behavior of those who manage the visa process. Under current practice, nearly all visa applicants, no matter how low-risk, must submit to personal interviews. Nearly all applications of scientists at the graduate level and above, no matter how routine, are sent to Washington for interagency review, as are those of most Arab and Muslim men, no matter how low-risk. Most repeat visitors and those who leave the country temporarily are put through the same reviews all over again.

This overkill does not help our security. It clogs the process with routine reviews, preventing more intensive focus on problem cases and needlessly impeding those legitimate visitors whose access to our country is important to us. The State Department has taken important steps to improve the situation, but much more needs to be done. Controls on advanced science and technology need to be refined; consular discretion in waiving the requirement for a personal appearance should be restored, under careful State Department guidelines; and repetitious processing should be eliminated as much as possible.

A policy must also create a system for finding applications that have disappeared into the pipeline of interagency review, so that people will not have to wait indefinitely, with no information, to learn whether they’ll be granted visas. The State Department has taken steps to make the screening process more efficient by improving interagency data sharing, extending the clearances granted to certain scientists and scholars, and chipping away at the number of clearance cases that take more than a few weeks. Guidelines must be added to improve the transparency and predictability of the interagency review process, with time limits for agencies and a means by which people can inquire about the status of their applications.

Finally, Congress must act to provide the resources for a balanced, effective visa-processing system. Resources for our consulates abroad must be brought in line with the increased scrutiny of

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visa applicants that Congress has demanded, and funds must be provided to pay for the sophisticated data systems necessary for the interagency review process.

Secretary of State Colin Powell and Homeland Security Secretary Tom Ridge have said that they believe the nation's approach to visa processing must strike the proper balance between control and openness. They must now ask their agencies for a plan to fully address the problems and implement the solutions that will help the United States regain its position as the world's premier academic destination. They will find willing partners in America's colleges and universities.

PREFACE

Our goal in building this book was to create the single best reference work in print about immigration for Academics and Researchers. We have tried to put together a reference work that is both scholarly and useful, balancing detailed technical immigration legal analysis with practical advice. We hope it will provide both a solid foundation for those new to the subject, and sophisticated analysis and practice tips that will benefit even the most advanced experts.

First and foremost, thanks are due to the world-class authors who created this book. The writers are virtually all among the top experts in the country on their respective immigration topics. Thanks are also due to AILA's *summa cum laude* Senior Legal Editor, Stephanie Browning, and AILA's Director of Publications, Randy Auerbach, for their assiduous work editing and publishing this volume.

We would be remiss if we failed to note the special history of this book. The predecessor of this volume, *Immigration Options for Professors and Researchers*, went to press more than 10 years ago in May 1994. It was the first book ever published in AILA's Occupational Guidebook Series. The first version, prepared under the leadership of Robert P. Deasy as Editor-in-Chief and Amy R. Novick as Managing Editor, has become an AILA classic. We hope that this expanded volume is a worthy successor. Thank you to all of the authors and editors of the first volume for their pioneering articles in the field of immigration law and higher education.

This book is also noteworthy because it embodies an unprecedented level of collaboration between the immigration bar and the American higher education community. In addition to contributions from the nation's top immigration lawyers, this book has benefited greatly from the expertise of international educators at colleges and universities throughout America. We are honored and grateful for the contributions of Marlene Johnson, Executive Director of NAFSA: AIE; Robin Catmur (Dartmouth College); Jennifer Deasy (ECFMG); Eleanor M. Fitzpatrick (ECFMG); David J. Fosnocht (NAFSA); Anne Gardsbane (Harvard University); Andrea Godfread-Brown (Syracuse University); Marjory Gooding (California Institute of Technology); Cary Jensen (University of Rochester); Gloria Law (University of California, Berkeley); Jaclyn J. Lieberman (The Salk Institute for Biological Studies); Robert C. Lum (University of Southern California); Penny Rosser (Massachusetts Institute of Technology); Dana Roth (California Institute of Technology); Rick Schlee (University of California, Berkeley); Daniel Smith (California Institute of Technology); Harlan Smith (University of Vermont); Illana Smith (California Institute of Technology); Kathy Steiner-Lang (Washington University); Laura Taylor (Cornell University); Tracy Wallowicz (ECFMG); and Gang Wang (Yale University).

This book is dedicated to our colleagues in the higher education community and the immigration bar in the spirit of professional collaboration.

Respectfully submitted with best wishes for the future success of
global cooperation and international exchange in higher education,

Scott M. Borene & Dan H. Berger
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