Immigration Law and Policy After the Election

While the 2016 presidential election has brought concern amongst international students and scholars in the U.S., it is important to note that the current framework for immigration law has not changed and will remain intact until January 20, 2017. Below are a few clarifying points on the immigration laws and policies that might be of relevance to the international community at UD:

1. The main framework for immigration law remains the same today. Congress passed the Immigration and Nationality Act (The Act) in 1952 and this remains the framework for immigration law. The Act includes temporary (i.e., students, visitors) and permanent (i.e., family, employment) categories through which people may be admitted and specific grounds for removing (deporting) a person. The Act also describes various procedures for how a person is removed. Finally, the Act contains several forms of relief and protection for qualifying individuals.

2. Even if Congress has the authority to change the statute or fund certain enforcement actions (i.e., deportation, border wall), implementation may take years. To change or repeal a section of the Act would require an act of Congress. Employees of DHS and Department of Justice will continue to process and adjudicate applications and are required to follow these laws unless and until Congress passes new laws. If these laws are not followed, violations may be the subject of litigation in the courts.

3. All current regulations for immigration remain the same today. A change or repeal to regulations published during President Obama’s Administration may require new regulations and a time period with written notice and comment from the public. This will take time. If a regulatory change does not require “notice and comment” the timeline could be quicker.

4. A new Administration has the authority to “revoke” or change immigration policies that were originally crafted by the Executive Branch without legislation or a regulation. These can happen more quickly than a change to the statute or regulation and include may include DACA 2012 (and related work authorization).

5. Though policy documents by a new Administration can be “revoked” the current Administration’s policies are still in effect and may be used by noncitizens until and unless a new President has modified or repealed these memos. Some important policies appear below:

   Deferred Action for Childhood Arrivals (DACA): Deferred Action for Childhood Arrivals is a program implemented in 2012 that allows qualifying individuals who entered the United States before the age of 16 to apply for a form of prosecutorial discretion called “deferred action” and on this basis apply for employment authorization. Whether or not a person should now apply for DACA 2012 initially or seek a renewal of such status has varying levels of risk. See following explanation from ILRC (Immigrant Legal Resource Center) about these risks:

   Initial DACA applications. For those who have not yet applied for DACA, the processing of those applications is taking long enough now that they would likely not be adjudicated until after January 2017, and it is possible the DACA program will not exist by then. Therefore, at this point potential applicants’ efforts to assemble an initial DACA application and pay the filing fees (which go up in December 2016) may result in no benefit and expose them to DHS.

   DACA renewals. It is unknown whether the next Administration will terminate existing DACA grants or instead not allow DACA recipients to renew. Those who have already received DACA are known by the government. Therefore, renewing DACA does not carry a new risk. In fact, renewing DACA may mean a DACA recipient can have a work permit until it expires one to two years into the next Administration. One risk, however, is again that the renewal might not be adjudicated before the new President takes office.
People who file to renew soon may be successful, as DACA renewals are currently being processed in 8 weeks with USCIS' upgraded system.

6. Every noncitizen has rights and responsibilities. For more information, see U.S. Department of State Resource: Are You Coming To The United States Temporarily To Work Or Study?

The Office for International Students and Scholars (OISS) at the University of Delaware is here to help advise international students and scholars on how to maintain their status in the United States. Please stay current on any changes in immigration regulations via the OISS web site and through updates sent to your UD email account.

Immigration regulations can vary depending on your individual case or situation. Always consult an OISS advisor for the most accurate information or whenever in doubt.

This document is subject to change and does not constitute legal advice. Specific questions should be directed to a qualified immigration attorney or representative. The information on this handout has been developed and adapted from Penn State Law: https://pennstate.law.psu.edu.