

February 6, 2015

TO: Residency Officers

FROM: Jim West, Associate Director of Academic Affairs

SUBJECT: Modification of Non-immigrant Students and Form HB1079¹ Requirements

The Department of Homeland Security (DHS) has clarified requirements that apply to individuals applying for adjustment of status to become permanent residents of the U.S. This necessitates a change in Washington's documentation requirements for students in certain non-immigrant visa categories who might qualify for resident tuition under RCW 28.B15.012(2)(e) - known as the "1079" provision. This memo supersedes the clarification memo dated October 30, 2008.

Summary

Based on recent discussions between the Assistant Attorney General for Residency and the Department of Homeland Security, requirements for nonimmigrant visa holders submitting 1079 affidavits are revised **effective January 1, 2015**. No additional documentation will be required beyond what would normally be requested of any other student submitting the 1079 affidavit. That is, an I-485 receipt notice is no longer required when submitting the 1079 affidavit.

Detail

On January 16, 2015 Assistant Attorney General for Residency, Justin Kjolseth, met with U.S. Citizenship and Immigration Services Agent Scott Fritschle regarding Permanent Residency and the requirements for eligibility to file as a Permanent Resident. Mr. Fritschle advised that eligibility to file an application for permanent residency is not related to an individual's visa status, and thus a nonimmigrant visa status should no longer be considered "conflicting information" that requires further documentation, as indicated in the Residency Handbook.²

To be eligible for permanent residency, an individual must fall into one of the eligibility categories listed on the application, most commonly family or employer sponsorship. Individuals with nonimmigrant visas are neither particularly qualified for nor precluded from filing applications for permanent residency. However, even when an individual meets the applicable eligibility requirements, they are disallowed from filing the I-485 until a visa number becomes available. The wait time for visa availability depends on the individual's basis for eligibility, priority date, and the nation of their original citizenship, and can be as long as thirteen years. Thus, even though a student may meet all requirements of HB 1079 and all eligibility requirements for permanent residency, they may still be precluded from filing an I-485 for an extended period of time.

Individuals who file a form I-485 will receive a receipt notice regardless of whether they are actually eligible for permanent residency. It is clear based upon anecdotal evidence that at least some students elect to take the risk of filing an I-485 for which they are not eligible in order to meet the documentation requirement. As a consequence, the receipt notice is of very limited value in assessing whether a student is able to follow through on the promise in their 1079 affidavit to seek permanent residency. This is especially concerning given that an ineligible I-485 application can jeopardize the alien's chances of success in the immigration process. Such an outcome would

¹ Washington Student Achievement Council form HB 1079.

² See *Residency Handbook* (2014), page 12.

appear to run contrary to the purpose of HB 1079, which encourages these students to apply for permanent residency *if and when they are eligible*.

Therefore, if the student has demonstrated that they meet all other requirements outlined on the 1079 affidavit and attest that they will “file an application to become a permanent resident of the United States as soon as I am eligible,” the student qualifies as a resident for purposes of in-state tuition. The I-485 receipt notice is no longer required when submitting the 1079 affidavit.

If you have questions, please contact me at 360-753-7890.