Global Workers Justice Alliance

Comments on Public Notice Regarding Exchange Visitor Program
Summer Work Travel Job Placement Verification Form

Rick A. Ruth
Deputy Assistant Secretary, Acting
for Private Sector Exchange
U.S. Department of State
SA-5, Floor 5
220 C Street NW
Washington, D.C. 20522-0505

Re: Public Notice 7695. 60-Day Notice of Proposed Information, Collection: Form DS–7007, Summer Work Travel Job Placement Verification Form. 76 Fed. Reg. 72996 (November 28, 2011).

Dear Mr. Ruth:

Global Workers Justice Alliance (Global Workers) respectfully submits brief comments on the proposed regulatory changes to the summer work travel program. Global Workers specializes in the legal and practical challenges of representing low-wage workers who leave the United States after suffering labor exploitation. While we have focused mostly on H-2 visa holders, over the past few years we increasingly assist U.S. advocates representing J-1 visa holders, especially those on summer work travel visas.

We applaud the Department's proposed regulatory changes as an important step forward to ensure that the students have more knowledge about the jobs that await them in the United States. We encourage the Department to ensure that the changes achieve their intended affect, to protect students from exploitation, by strengthening the proposed regulations in eight areas.

1. The Department Should Require Consular Officials To Collect Copy of Job Placement Verification Form During The Consular Interview

The proposed rule states that the consular official may request a copy of the fully executed form DS-7007 during consular interview. Lack of knowledge of the actual job conditions in the U.S. contributes greatly to J-1 student labor exploitation. Knowing the terms and conditions places the students in a better position to defend themselves if the employer strays from the promised conditions. To ensure that the DS-7007 is executed, *Global Workers strongly urges the Department to require consular officials to obtain a copy of the form*. Mandatory disclosure is a stronger statement that the information is important and must be correct. If the requirement is seemingly optional, the goals of the form will be more difficult to achieve. Additionally, the information should be entered into a database that ECA and the public can access.

2. Placement Report

Under current 22 C.F.R sec. 62.32 (h), the Bureau of Educational and Cultural Affairs (ECA) requires the Sponsor to provide a Placement Report twice a year covering the placements during the prior six months. The placement report should be updated to reflect the new requirements under the proposed rule change. If the job terms disclosed in the Placement Report vary from the Job Placement Verification Form, the employer should be held liable.

3. Public Disclosure

The information gathered under the proposed regulations should be publicly available so that advocates and students can ensure that the promised terms and conditions are being met and comply with the law. In the minimum, the DS-7007 should be available as a PDF, as the Department of Labor does for H-2A contracts through its E-registry system. Disclosures should be made public as quickly as possible so that advocates and students can access the information while the students are still employed. Additionally, the information in the proposed DS-7007 should be available through a searchable database such as the DOL does with H-2 employer data.

4. Job Placement Verification Form is an Enforceable Contract

Although the Job Placement Verification Form is arguably a contract, it should be stated clearly on the form and in the final regulations. The students rely on these disclosed terms and conditions when making the decision to come to the United States. If the terms and conditions are different once they arrive in the U.S., students must have the ability to enforce the original contract terms in court.

5. Department of Labor should be Granted Authority to Enforce the Job Placement Contract

While the exchange visitor program was designed to expose international visitors to U.S. culture, the employment aspect is an undeniable, and central, aspect to the

program. For this reason, it is imperative that the Department of Labor (DOL) is granted jurisdiction to enforce the job terms the students are promised. There is evidence that more employers are turning to the J-1 program to avoid regulations in other visa categories, such as H-2. One of the incentives that drive employers to the J-1 visa category is precisely the lack of DOL oversight.

DOL is the obvious authority to enforce labor rights of J-1 students in the U.S. Currently, DOL can only enforce minimum wage and overtime rights of J-1 students. However, the students are promised more than the minimum federal requirements. It is patently unjust and creates the very real possibility of exploitation if DOL has no authority to compel employers to pay the students what was promised. Employers' mistreatment of students tarnishes the U.S. image and undermines the J-1 program.

6. Access to Federal Legal Services Must be Allowed

Federally funded legal services, which provide free legal services to the poor, must be permitted to represent J-1 students. Currently, J-1 visa holders are only eligible for legal services under extreme circumstances, for example when they are victims of human trafficking. By allowing all J-1 students access to free legal services we would hope that students could obtain the needed assistance before their exploitation rises to the level of severity to constitute human trafficking.

7. Pre-departure Costs Should be Disclosed to Ensure that Program is Achieving its Stated Purpose

Current regulations do not limit recruitment fees or costs. Indebted students are more vulnerable to exploitation. Prohibiting, or at least limiting, the fees and costs students invest to participate in the program would, perhaps, be the most significant and effective measure to thwart exploitation.

In absence of those regulatory steps, there are other measures that will help reduce student vulnerability. The proposed DS-7007 should also require students to divulge the fees and costs they paid, and to whom, to participate in the J-1 program. This data will provide the Department with important insight into how the J-1 program functions. For example, if students are investing $5,000 for recruiter related fees and transportation costs, but stand to earn less than that sum during their tenure in the U.S., a fundamental flaw in the program is revealed. Without additional financing, students will be unable to take advantage of the travel aspect of the J-1 visas after completing their employment. While advocates have anecdotal information revealing the high costs students invest in the program, systematic collection and analysis would greatly aid the Department to design a program that achieves the goals for which it was created.

8. Disclosure of Student Recruitment and Employment "Chain" is Necessary to Prevent Exploitation

The proposed DS-7007 focuses on the student, sponsor, and employer. This is only a portion of the parties that affect the quality of the students' experience. Many J-1 students apply for the J-1 visa through recruiters. The recruiters often charge enormous fees to students of which even the Sponsors may be unaware. Requiring the Sponsor to disclose the recruitment supply chain, from the direct hire (principal recruiter) through to the subcontractors who directly interact with the students, is key to holding them accountable for any activities in the recruitment process that may violate U.S. or foreign law.

Once in the U.S., J-1 students often find themselves working for a company that is just a shell. Through a series of subcontracting layers, the entity that traditionally has been considered the employer is often no longer. The Hershey example demonstrates this complexity well. Disclosure of the employment chain beyond the employer on the paycheck to the companies who own and control the work site is important for accountability. The students often have no knowledge of the layers of companies that affect their employment, and where to go to address problems in the work place, should they arise. Greater transparency should be embraced in a program based on exposing foreign students to American values. If we want foreign students to have good experiences, we must take measures to ensure that this will happen, not just rely on the benevolence of the employer.

In closing, Global Workers reiterates that it supports the Department's effort to reduce the exploitation of students in the J-1 Summer Travel Program. As noted, Global Workers is increasingly involved in the J-1 program. In September 2011, Global Workers released a report on recruitment challenges in the in the H-2 context entitled, Why Transparency in the Recruiter Supply Chain is Important in the Effort to Reduce Exploitation of H-2 Workers (available at http://www.globalworkers.org/publications.html)
The analysis is very relevant to the J-1 situation today. Greater consistency cross visa categories would make the administration of the various temporary worker visas better for all the parties involved. We look forward to working with ECA on this process.

Sincerely,
Cathleen Caron
Executive Director
Global Workers Justice Alliance