

LOS ANGELES COUNTY BAR ASSOCIATION, IMMIGRATION SECTION
AILA, SOUTHERN CALIFORNIA CHAPTER
AGENDA FOR
CBP LIAISON MEETING

September 27, 2006

The following are CBP agenda items proposed by members of the Los Angeles Country Bar Association, Immigration Section, and the American Immigration Lawyers Association, Southern California Chapter:

Nonimmigrant Admissions:

1. What is the policy and procedure for permitting a B-1/B-2 visitor into the United States on short visits when they have immediate relatives living in the U.S. who are LPR's or USC's? We have seen inconsistent procedures at various POEs whereby some visitors are excluded or interrogated, while others are admitted without any problems.

RESPONSE: A B-1/B-2 nonimmigrant alien (like the nonimmigrant aliens discussed below in Question 2) must establish to the satisfaction of the inspecting CBP Officer that s/he meets the definition of a B-1/B-2 or F-1 nonimmigrant contained in sections 101(a)(15)(B) or 101(a)(15)(F) of the INA. This definition includes "having a residence in a foreign country which he has no intention of abandoning." If such an alien has USC/LPR immediate relatives in the US or is the beneficiary of a pending I-130 petition with a lengthy visa backlog, the inspecting officer must determine, on a case-by-case basis, if the alien still fits the definition of a nonimmigrant alien as described in the law. The facts of one case might allow a favorable determination to be made during the primary inspection while the facts of another case might require a more in-depth secondary inspection before the alien could be admitted. Meanwhile, the facts of a third case could lead to a determination of inadmissibility.

Visitor/Student Admission While I-130 is Pending:

2. If one applies for temporary admission as a visitor (B-1/B-2) or as an F-1 Student, what is CBP's position on admission if an I-130 is pending for such individual in one of the family-based preference categories with a potential visa number backlog of five to ten years or more?

RESPONSE: Please see the above response to Question 1.

Admission Withdrawal at the Port of Entry:

3. Please state if there are any updates to the procedure to withdraw admission upon Port of Entry? Could the alien still initiate the withdrawal for admission on his own? Would the CBP officer be required to initiate the withdrawal?

RESPONSE: There have been no changes to these procedures. CBP may, as a matter of discretion, allow an alien to withdraw his/her application for admission. There is nothing in the law to prevent an alien from asking to be allowed to withdraw his/her application for admission. However, the decision to allow the alien to withdraw at a POE is made by CBP not by the alien.

4. Has CBP ever withdrawn an admission after it was granted? If yes, what are the circumstances under which such withdrawal is enforced?

RESPONSE: An alien who was admitted during a primary inspection but who has not left the Federal Inspection Service Area is still subject to the grounds of inadmissibility under section 212(a) of the INA. For example: An alien admitted during primary inspection might undergo a baggage control secondary examination that uncovers evidence of inadmissibility. In such a case, the alien could be denied admission and then be allowed to withdraw his/her application for admission.

5. What is CBP policy and procedure when an entry was withdrawn at the POE and at the same time allowed the alien to seek entry at another port of entry?

RESPONSE: The fact that an alien was allowed to withdraw his/her application for admission does not, by itself, render that alien inadmissible during a subsequent application for admission. However, the grounds of inadmissibility underlying that withdrawal could still apply. An alien who was allowed to withdraw his/her application for admission at one POE and who then applies for admission at another POE should expect to be questioned regarding the circumstances of the prior withdrawal. This alien will have to establish that s/he has overcome the grounds of inadmissibility for the prior withdrawal and that no grounds of inadmissibility apply during any subsequent application for admission.

LPR Departures:

6. Does CBP at this time track departure records for Lawful Permanent Residents?

RESPONSE: There is no arrival/departure record system for Lawful Permanent Residents as there is for most nonimmigrant aliens. However, airlines and cruise ship lines are required to submit Advanced Passenger Information System (APIS) data to CBP for each passenger and crewmember arriving in, or departing from, the United States. This would include Lawful Permanent Residents.

7. Has CBP been updated with new I-551 stamps issued by US CIS? What changes should we advise clients to expect at POEs?

RESPONSE: CBP has received updated information regarding the I-551 stamps used by US CIS and has disseminated that information to all officers. Travelers presenting documents bearing these stamps should expect to undergo increased scrutiny since the I-551 stamp lacks the security features of the I-551 card.

Western Hemisphere Travel Initiative:

8. Western Hemisphere Travel Initiative – As of December 31, 2006, all travelers from the Americas, the Caribbean and Bermuda must have a passport or other accepted travel document to enter or re-enter the U.S. by air or sea. As of December 31, 2007 the law applies to all land border crossings. Will this provision apply to travelers from Mexico and Canada as well? We understand Canada implementation was delayed.

RESPONSE: As stated in the notice of proposed rule making published in the Federal Register on August 11, 2006, the provisions applying to air and sea travelers will take effect on January 8, 2007 and will apply to travelers arriving from Canada and Mexico. There have been no delays announced. A notice of proposed rulemaking regarding travelers arriving at land border crossings has not yet been published.

Format of Documents on CBP's website:

9. The following web address http://www.cbp.gov/xp/cgov/toolbox/legal/Rulings/downloadable_rulings/2006hq/ contains downloadable CBP rulings. The links on the site are for executable files and not documents. There have been complaints that the file formats could damage the computer accessing a file for viewing. Is it possible to raise this issue with CBP National to provide PDF files?

RESPONSE: Providing the downloadable rulings in PDF format is not currently planned. Regardless of the rulings file format, the downloadable rulings would need to be zipped to make them reasonably accessible - there are approximately 134,000 rulings. Generally speaking, Microsoft Word or plain text files prove to be the most accessible to the largest audience and are the original format of the rulings documents. It is more efficient to maintain that format.

While CBP makes no specific claim as to the safety of the executable files on CBP.gov, the downloadable rulings are from a trusted source (CBP). Executable files are simply files that perform some type of action and have the potential to impact the user's system in whatever way the author of the file has intended. In the case of downloadable rulings, the executable files simply unzip or decompress the files and places them on the user's system. Executable files can contain malicious

code that adversely impacts the user's system, but only if the author of the file has intended such action or malicious code otherwise makes it way into the executable file.

Unless the user of the rulings has a specific need to download rulings in bulk and process in some value added way, these rulings can be accessed by using the CBP Rulings Online Search System (CROSS). This system is extremely efficient for searching and retrieving CBP rulings and also provides a mechanism to download individual rulings as MS Word files. CROSS is updated with new rulings as soon as they are provided from the original source, has keyword highlighting, tracks relationships between rulings, and has significant query capability not found in other systems.

The CROSS Internet Address is: <http://rulings.cbp.gov>

Access to personal documents by an alien taken into custody at the airport:

10. Please state CBP policy and procedure for an arriving alien taken into custody at the airport who wishes to access the documents stored in his luggage to be used as supporting evidence in the alien's possible claims, i.e. asylum claim. Are these documents and luggage handed over to ICE? Could CBP surrender the luggage intact to the alien's relatives after inspection? Please state CBP policy to release an alien's personal effects and luggage confiscated by CBP to the alien's attorney upon request?

RESPONSE: Since this question discusses an asylum claim, these documents should be taken as evidence and included in the case file for consideration by the Asylum Officer and/or Immigration Judge. When an inadmissible alien is detained for a credible fear determination or to appear before an Immigration Judge, the alien (with his luggage and personal effects) is turned over to Detention and Removal Operations, Immigration and Customs Enforcement. Any questions regarding access to the alien's luggage and personal effects should be addressed to that agency.

Copy of the Q&A Document:

11. What is CBP policy and procedure to provide a copy of the Q&A document to the alien upon his/her return to the home country of nationality, once the CBP officer at the Port of Entry has determined that the arriving alien is inadmissible and should be returned to the home country?

RESPONSE: It is CBP policy to provide a copy of the sworn statement (Q & A document) to aliens determined to be inadmissible.

12. If no copy could be provided to the alien, would a simple FOIA to Washington or port director at the POE be sufficient to obtain a copy at a later time?

RESPONSE: A FOIA request is the appropriate means to obtain a copy of the sworn statement. Once an inadmissible alien is removed, the A-File containing the original sworn statement is sent to the National Records Center. For this reason, the FOIA request should be sent to:

National Records Center,
FOIA/PA office,
P.O. Box 648010,
Lee's Summit, MO 64064-8010.

Updates

Have there been any staffing changes in the Los Angeles field office?

RESPONSE: See attached LA Field Office Org. Chart.

Have there been any policy changes with respect to inspection and admission of foreign nationals?

RESPONSE: There have been no significant changes since our last meeting.

Are there any new or upcoming programs at CBP that affect the inspection and admission of non-US citizens?

RESPONSE: There has been a change in the CIS mailing address used for I-90's processed by CBP (Lost/Stolen Passports).

Have there been any new procedures set up to secure LAX, San Pedro and TJ borders?

RESPONSE: The following are some measures that CBP has implemented to address the threat of terrorism in the air and maritime environment:

- Identify high-risk shipments/containers. CBP uses automated targeting tools to identify shipments/containers that pose a potential risk for terrorism, based on advance information and strategic intelligence.
- Uses technology to prescreen high-risk shipments/containers to ensure that screening can be done rapidly without slowing down the movement of trade. This technology includes large-scale X-ray and gamma ray machines and radiation detection devices.
- Uses canine detection teams, that are capable of identifying narcotics, bulk

currency, human beings, explosives, and agricultural pests, are deployed at both LAX and the LA/LB Seaport.

- CBP Officers conducting interviews and examinations on the front lines form the most important factor in keeping terrorists, terrorist materials, and other contraband from entering America. Using their training, intuition, and experience to detect anomalies and inconsistencies, these officers are the linchpins of the inspection process.
- Identify and address port security weaknesses/vulnerabilities with appropriate DHS partners as well as local Law Enforcement Agencies.

U.S. Customs and Border Protection

Office of Field Operation Los Angeles

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