

CBP – AILA/LACBA Liaison Meeting Questions
9/14/09, 10:00am

BORDER PATROL OPERATIONS

1. How far north into Orange County do CBP Border Patrol agents, based out of San Clemente, travel on Interstate 5 on routine patrol, if the agent is not in pursuit of a specific individual or does not have a warrant?

Response: The San Clemente Border Patrol Station is under the operational control of the San Diego Border Patrol Sector. The sector headquarters office is better suited to answer this question and can be contacted at:

Chief Patrol Agent Michael J. Fisher
San Diego Border Patrol Sector
US Customs and Border Protection
2411 Boswell Rd., Chula Vista, CA 91914-3519
Phone Number: (619) 216-4000

I-94 CORRECTIONS: POST-DEPARTURE

2. Is there anything CBP can do to correct an error made on an I-94, if the non-citizen has already returned to his home country and cannot get the error fixed at Deferred Inspection?

(E.g. CBP mistakenly marks the year of expiration of authorized stay incorrectly on an I-94 card, granting a visitor 18 months on a B-2 entry instead of 6 months. The visitor departs within the 18-month period, returns home, applies for a green card, and is determined to be inadmissible by DOS because of visa overstay).

If CBP can assist in such a case in recognizing officer error and retroactively correcting the period of authorized stay, which office would be the correct point of contact?

Response: If the alien in question is no longer in the United States, the best point of contact would be port management at the port of entry that issued the I-94. The issuing port management would be best suited to determine whether correction would be appropriate. Such a determination could only be made on a case-by-case basis.

It is unclear how the correction process could benefit the alien in the above-discussed scenario. Any correction of the *admit-until-date* would result in the alien's period of admission being shortened from 18 to 6 months thereby increasing the length of any overstay. For this reason, it appears we may not understand the issue that you seek to present in this scenario.

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INSPECTION / ADMISSION OF NON-IMMIGRANTS

3. What, if any, procedure exists for annotating I-94 cards for TNs entering to pursue concurrent employment? Is it routine to annotate one or both petitioning employers? Alternatively, is information on concurrent petitioners entered into government databases? (If full information regarding both petitioners were not annotated on the I-94 or noted in government databases, the possible complication would be that there is no proof of valid past TN status to provide to USCIS upon requesting extension of status).

Response: Current procedures are to annotate the TN nonimmigrant alien's occupation and the employer's name and address on the back of the arrival portion of the I-94. If the alien presents documentation of concurrent employment when the I-94 is issued, the officer should record both employers. If a TN alien is the beneficiary of a petition, the petitioning employer's information would be recorded in CLAIMS, a USCIS database.

4. Is there a "higher standard" for applicants for B-2 admission who have an I-130 or I-140 pending?

Response: Any alien applying for admission as a temporary visitor for pleasure bears the burden of proving that s/he is not an intending immigrant. If this alien is the beneficiary of a pending immigrant visa petition, the inspecting CBP officer must consider that petition along with all other relevant facts when determining admissibility. A pending immigrant visa petition, by itself, would not necessarily support a finding of inadmissibility. However, such a petition could be enough to support such a determination when considered in conjunction with other factors on a case-by-case basis.

INSPECTION / ADMISSION OF NON-CITIZENS WITH CRIMINAL CONVICTIONS

5. What is CBP's policy, if any, concerning transfer to ICE detention / custody for arriving non-citizens with criminal convictions? Is this policy different for LPRs vs. non-immigrants?

Response: An arriving nonimmigrant alien who is inadmissible under section 212(a)(2), INA is usually allowed to withdraw his/her application for admission or refused admission under the Visa Waiver Program. Such aliens could be transferred to ICE/DRO custody pending departure. This would depend upon the scheduled departure time of the next available flight.

For any alien, including an LPR, who is placed in section 240 Removal Proceedings, the decision to detain in custody or to parole into the US for proceedings would depend upon various factors such as:

- Is the alien subject to mandatory detention?
- Does s/he represent a threat to the community?
- Is the alien likely to appear for proceedings?
- Is there any form of relief available to the alien in removal proceedings?

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6. As per 8 CFR 292.5(b), applicants for admission have the right to representation by counsel during primary/secondary inspection if they are “the focus of criminal investigation and ha[ve] been taken into custody.” What are the appropriate procedures for counsel to communicate with CBP in this situation to present documents and legal arguments on behalf of the applicant for admission? Alternatively, how can an applicant for admission in this situation effectively assert their right to communicate with counsel?

Response: Pursuant to 8 CFR 292.5(b) an alien at primary or secondary inspection is entitled to representation only when s/he becomes the focus of a criminal investigation and has been taken into custody. When the CBP officer examines an alien under these limited circumstances, the officer will advise the alien of his/her Miranda rights and afford the alien an opportunity to assert those rights and request that his/her attorney be present for the interrogation.

INSPECTION / ADMISSION OF LPRs PENDING REMOVAL

7. Assuming that the applicant’s passport has not been confiscated and therefore international travel is possible, what is CBP’s procedure to admit or parole a returning LPR who is currently in removal proceedings and is returning to the United States to attend the next hearing? Are these procedures any different if the applicant has an expired temporary I-551 or otherwise lacks a proper entry document?

Response: A returning LPR alien who is in removal proceedings would be paroled into the United States for those proceedings. This would apply even if s/he lacks an unexpired temporary I-551 or other valid entry document, provided that CBP is able to verify that the alien’s LPR status has not yet been terminated by a final administrative order of exclusion, deportation or removal. If the alien lacks a valid entry document, the carrier of arrival could refuse to board this alien at the port of departure to the US to avoid potential liability under section 273, INA.

ADJUSTMENT OF STATUS & PAROLE

8. When an applicant for admission arrives at a Port of Entry with an expired Advance Parole document, can any discretionary factors be considered to parole the applicant notwithstanding the expired document?

Response: The key factor for consideration is the purpose of the parole. If an alien pending adjustment of status arrives with an expired Form I-512, the adjustment of status application (Form I-485) is presumed to have been abandoned except in the case of certain nonimmigrant aliens, e.g., H-1, L-1, etc. If the adjustment of status is based upon an immediate relative or family-based petition and the application has not been denied, USCIS may allow the alien to file a new I-485 while in a parole status. In such a case, CBP could parole the alien in for deferred inspection to present proof of filing a new I-485 with USCIS. This would be the purpose of the parole. On the other hand, this course of action is not available for an alien pending an employment-based adjustment of status since USCIS advises that such an alien must be in a valid nonimmigrant status to file a new I-485. The only possible exception would be if the alien is *grandfathered* under section 245(i) of the INA.

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9. When an applicant for admission has applied for Adjustment of Status and that application is denied during the applicant's absence, what factors are considered for parole notwithstanding the denial?

Response: As stated in the response to question 8, the key factor for consideration is the purpose of the parole. If the I-512 is already expired, this alien would be subject to expedited removal in most cases. If it is not expired, this alien would usually be eligible for a section 240 hearing. In either case, the alien is clearly inadmissible. This alien could be allowed to withdraw his/her application for admission. If s/he declines to withdraw, initiation of removal proceedings under section 235(b)(1) or section 240, INA would be appropriate.

LOCAL CBP CUSTOMER SERVICE / REDRESS

10. Members note that LAX airport has a "Passenger Service Manager" Kris Rueda whose name and contact information is posted in the airport and on CBP's website. Please clarify the role of the Passenger Service Manager as distinguished from CBP's national Customer Service operations in Washington, DC. Under what circumstances is it appropriate to contact the Passenger Service Manager for redress as opposed to the national CBP Customer Service center?

Response: The Passenger Service Manger (PSM) provides a real-time response to assist travelers regarding their own passenger service experiences. The PSM is aware of the regulations governing representation in either primary or secondary inspection and will refer attorneys seeking assistance regarding client issues (admissibility, denial of admission, etc.) to the appropriate manager, e.g., the Passport Control Section Chief.

Questions about CBP travel regulations or processes, or complaints regarding treatment by a CBP employee may be directed to the Customer Service Center. Questions regarding why a client's entry into the U.S. is denied or delayed, or why s/he is repeatedly sent to secondary should be addressed to DHS/TRIP.

SEARCHES OF ELECTRONIC MEDIA

11. What is the policy goal of the new CBP directive (3340-049) in broadening the search authority for electronic media? Is it projected to alter or significantly affect inspection procedures at LAX? Does it affect timelines or procedures for retaining / returning personal property to the person from whom it was seized?

Response: CBP Directive 3340-049, Border Search of Electronic Devices Containing Information, issued August 20, 2009, clarifies the agency's position on the border search authority for electronic media and the procedures associated with such searches. The new directive provides more detailed oversight and accountability requirements when border searches of electronic devices are conducted. The timeframe for detention has been defined as five days, absent extenuating circumstances, and requires detentions surpassing five days to be reviewed and approved by the Port Director and later the Director of Field Operations. The policy also includes requirements that electronic devices be searched in the presence of a supervisor and,

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when feasible, that the search be conducted in the presence of the individual unless there are specific reasons not to do so. It also has specific provisions regarding the proper handling of privileged or sensitive information.

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