

**LOS ANGELES COUNTY BAR ASSOCIATION, IMMIGRATION SECTION  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION, SOUTHERN CALIFORNIA  
CHAPTER**

**AGENDA FOR CBP LIAISON MEETING  
October 18, 2010**

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:

**1. Seizure/Forfeiture**

**A] After a member of the public files a petition for relief from forfeiture, how long does it take before CBP responds? Does CBP have a timeline that binds it for these petitions?**

Questions concerning seized or forfeited items can be directed to: Fines, Penalties, and Forfeitures (FP&F) (562) 366-5400. If this question pertains only to travel documents see part B.

**B] How could such a traveler get his passport if CBP decides to confiscate it? Does CBP have a statute of limitation on whether or not to refer the matter for an NTA?**

CBP would take custody of a properly issued unaltered travel document only under very limited situations. If a case is being presented to an Immigration Judge the travel document may be held to be available at the hearing before an IJ. The travel document may be returned to the alien by the IJ.

In other cases CBP Officers would take custody of travel documents that were either altered, counterfeit, presented by an impostor, or obtained by fraud. In these cases the alien would be issued a single journey travel document.

Occasionally the Department of State requests that a US Passport reported lost or stolen be returned to DOS by CBP; in those cases requests for return of the document must be made to DOS.

**2. Canadian Tourists**

**A] Does CBP have a uniform, written policy on how to process Canadians who enter as tourists? Does CBP stamp each Canadian's passport?**

Yes, CBP has statutes and regulations regarding the admission of tourists (B2 applicants for admission) with specific exemptions and exceptions for Canadian visitors for pleasure.

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8 CFR PART 214 NONIMMIGRANT CLASSES details consideration for non immigrant admissions and 8 CFR PART 214.2(b) discusses B2 visits specifically. IFM Chapter 15 also details general processing of non-immigrants and exceptions for processing of Canadian visitors.

**B] Is it CBP's understanding that Canadian tourists are entitled to a six-month visit? If so, is this a written rule or regulation, or is it an informal policy?**

All B2 (tourist) visitors receive an initial entry of six-months. See 8 CFR Part 214.2(b)

Detailed processing instructions for all NIV classifications are listed in Chapter 15 of the IFM.

### **3. Expedited Removal**

**A] Is there a way for an attorney to request that CBP reconsider a decision to order an expedited removal? Will CBP reconsider its decision if it is provided with evidence that the decision was made in error?**

Generally the Expedited Removal process is completed and the alien returned to his port of embarkation on the same day. See IFM 17.15 Expedited Removal and 8 CFR Sec. 235.3 Inadmissible Aliens and Expedited Removal.

Please refer to IFM Chapter 2.9 Dealing with Attorneys and Other Representatives

Please refer to INA Sec. 235 (b)(1)(A) Screening

**B] How do CBP officers decide when to allow an alien to withdraw an application to enter, and when to process that alien for expedited removal? Is there a set of written guidelines for this?**

IFM Chapter 17.15 Expedited Removal (ER) provides a detailed set of written guidelines to consider before completing a case for Expedited Removal and discusses the serious implications to arriving aliens when they are processed for ER.

IFM Chapter 17.2 Withdrawal of Application for Admission: also addresses several considerations to evaluate before determining whether to permit an alien to withdraw their application for admission.

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#### **4. Abandonment**

**If an I-551 card is taken away from an LPR at the airport on grounds of abandonment, what is the procedure in case the alien contests? Is an NTA always issued? What happens if the alien does not contest? How can that person be admitted? And, if they do not contest, but change their minds, what can they do?**

CBP may temporarily detain the I-551 and forward it to the Immigration Judge who may review a person's admissibility and status. In these cases a temporary I-551 is created for the alien.

If the alien agrees they have abandoned their status, they may voluntarily, willingly and affirmatively surrender their Form I-551, at which point they may be admitted B1-B2 or WT/WB, or if an alien disagrees or wishes to contest the abandonment determination, they may choose to appear before an IJ for a determination of LPR status.

An alien who wishes to have an IJ make the determination will be issued a NTA with a date to be set by the court.

Aliens who wish to recover their LPR status may request a hearing at any time before an IJ by presenting themselves at a POE and seeking entry as a LPR.

Please refer to IFM Chapter 17.6 and Chapter 17.10

#### **5. NIV Entrants**

**If a non-immigrant visa holder is given a validity period on his or her visa that is in fact beyond the maximum allowed for the category (i.e.- 6 years for an R-1), will he or she still be admitted during the period of validity but beyond the period that should have been allowed under the statute?**

The validity period of the NIV is independent of the period of admission that will be granted by the inspecting and admitting CBP Officer. For most NIV classifications periods of admission are specific time periods. Please refer to 8 CFR PART 214 -- NONIMMIGRANT CLASSES.

#### **6. Searches**

**What are the procedures and policies in place for conducting searches of electronic equipment (lap tops, cell phones, etc.) of passengers coming into LAX from overseas? What about protections in place for confidential information on those devices, including medical information, attorney-client communications, etc...?**

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CBP Directive 3340-049, Border Search of Electronic Devices Containing Information, issued August 20, 2009, contains the agency's position on the border search authority for electronic media and the procedures associated with such searches. This directive provides oversight and accountability requirements for border searches of electronic devices. The timeframe for detention is defined as five days, absent extenuating circumstances, and detentions surpassing five days require review and approval 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, when feasible, that the search be conducted in the presence of the individual and that the individual be provided with a fact sheet regarding this type of search, unless there are specific reasons not to do so. The directive provides specific directions regarding searches of legal materials, materials for which privilege is asserted, and sensitive materials such as medical records. The directive instructs Officers to contact the CBP Chief Counsel's Office if guidance is required for the proper handling of privileged or sensitive materials.

## **7. NTA Guidelines**

**What is the guideline for issuing an NTA for a returning LPR with a criminal record?  
Does CBP issue an NTA to all LPRs with a criminal record?**

CBP does not issue an NTA to all Lawful Permanent Residents with a criminal record. If the LPR's criminal record reaches the threshold set forth in Section 212 or Section 237 of the INA, CBP may issue an NTA. Please refer to IFM Chapter 17.6

**8. 8 CFR 211.1(b)(1) provides that "A waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director upon presentation of the child's birth certificate, to . . . a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien . . . of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States." Are conditional permanent residents covered by this regulation and, if so, what is the procedure for obtaining the waiver? In addition, please confirm that recordation of the child's entry shall be on Form I181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence.**

Yes, children of conditional residence who arrive in the circumstance described above in 8 CFR 211.1(b)(1) may be granted immigrant status. Processing instructions are contained in IFM Chapter 14.5

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## 9. Carry Over Question:

**The American Embassy in Sri Lanka issues an applicant an R-1 visa PRIOR to the final rule of November 26, 2008 requiring religious organizations to file petitions for approval of R-1 visas. Applicant entered the U.S. afterwards and is granted R-1 status for two years. Assuming Applicant's R-1 visa is still valid and he travels overseas (to a non contiguous country), can he re-enter in the same R-1 status?**

The applicant may be allowed re-entry provided he is Sri Lankan or not otherwise exempt a visa.

Please refer to IFM Chapter 15.4r and 8 CFR 214.2(r) for additional information.

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