

AILA- CHICAGO CHAPTER & CBP FIELD OFFICE LIAISON
MEETING
May 19, 2016

AILA Chicago Chapter Committee Members Present:

Nell Barker, Co-Chair
Tzu-Kai Lo, Co-Chair
Diana Rashid
Leah Duckett
Kristen Harris

1. Personnel

Have there been any personnel changes of senior management at the Chicago Ports of Entry?
Have there been any significant changes in these assignments?

CBP Officers at Chicago Field Office

William Ferrara, Director of Field Operations (12 state region)
Steven T. Artino, Assistant Director (Border Security), Chicago Field Office
Joseph Kolb, Admissibility and Passenger Programs Manager, Chicago Field Office
Brett Sturgeon, Admissibility and Passenger Programs Manager, Chicago Field Office
Robert Harris, Program Manager, Chicago Field Office

CBP Officers at Ports of Entry

O'Hare

Matthew Davies, Area Port Director
Michael Pfeiffer, Assistant Port Director, Passenger Operations
Hans Leiterman, Assistant Port Director, Tactical Operations
Paolo Bellantuono Chief Officer – Secondary Inspection, Deferred Inspection
Patrick Salgado, Chief Officer – Deferred Inspection
Gwen Flowers, Chief Officer
Peter Manno, Chief Officer
Jeffrey Toland, Chief Officer
Brian Bell, Watch Commander
Brian Henke, Watch Commander
Jaime Gray, Watch Commander
Marcos Jones, Chief Officer
Ralph Piccirilli, Chief Officer
Corey Scudder, Chief Officer
Sean Gillis, Professionalism Service Manager

Midway

Joseph Chavez, Chief
Florian Moran, Supervisor
Vigender Sawal, Supervisor
Marcella Lyles, Supervisor

Deferred Inspection

Samuel Merritt, Supervisor

Steve McKlem, Supervisor

2. Admission as Basis of Excludability

- a. It has come to our attention that foreign nationals are inappropriately being excluded based insufficient admissions of use of controlled substance, to wit, marijuana. Section 212(a)(2)(A)(i) classifies as "inadmissible":

[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —

(I) a crime involving moral turpitude..., or

(II) a violation of ... any law or regulation of ... a foreign country relating to a controlled substance (as defined in section 802 of Title 21).

However, case law has established three requirements which must be met for **an admission to qualify as having been validly obtained**.

- 1) The admitted conduct must constitute the essential elements of a crime in the jurisdiction where it occurred.
- 2) The applicant for admission must have been provided with the definition and essential elements of the crime prior to his admission of all elements.
- 3) Third, his admission must have been voluntary. See Matter of K, 7 I & N Dec. 594, 598, 1957.

We recognize the burden on an interviewing officer due to the requirement to cite the elements of specific criminal law in an inspection, particularly given the great range of topics or criminal conduct that may arise in the course of the discussion. However, finding an applicant inadmissible based on criminal conduct in the absence of a conviction in a court of law is a very serious matter. Where an applicant has not been afforded a criminal trial with respect to his conduct, or where he may not have the opportunity to be represented by counsel experienced in criminal matters, we submit to you that this should be treated more appropriately.

- b. Where the record does not reflect that any specific essential elements of a crime were discussed with the applicant prior to his purported admission that formed the basis of the inadmissibility, what can the port do to correct previous decision? Will the port accept a Motion to Vacate in these cases?

A request to correct the previous decision can be addressed to the Port Director via email with a signed G-28 attached.

3. Inspection/Admission Practices- General

- a. Several chapter members have been made aware by clients that substantial questions are routinely being asked at the port of entry of immigrants and non-immigrants about past drug use and experimentation. Can you tell us whether this is now a routine part of

inspection?

No, it is not a new routine part of inspection. Drug related questions may arise based on the visitor's behavior and conduct. There is not a checklist of questions for the primary officers to ask.

- b. What specific groups of individuals must be referred to secondary inspection before being allowed to enter the U.S.?

Advanced parolees, travelers with I-551 stamps. Travelers with prior immigration issues or criminal arrests and/or convictions are likely to be referred. If there are prior approved waivers, or a grant of permanent residence, they are likely to be referred upon their first entry subsequent to approval. Ideally, the secondary officer will be able to "clean-up" some of the record to prevent repeat secondary.

- c. Is it common at "rush hours" for there to be times when the lines for admission of US citizens is longer than for NIV applicants?

There may be longer lines for US citizens and lawful permanent residents, but longer lines do not necessarily equate to longer waiting time. CBP regularly shifts its resources to be able to process travelers as quickly as possible.

- d. What's CBPs position on admitting FNs in ESTA/Visa Waiver who have immediately prior been in the US in another status? What if they are traveling to the US from a contiguous territory after having been in the US immediately prior to traveling to Canada?

CBP has no official position on this. It is all based on the traveler's intent and purpose of visit.

- e. Despite the policy to not issue a new admission period if traveling to a contiguous territory for less than 30 days, can an FN request a new admission period anyway? If so, what are the standards for making this determination?

If the traveler was previously in the US and in the CBP systems, there is still a valid I-94 record for the same traveler, CBP officer most commonly will elect to re-admit the traveler under the same I-94. However, it is possible for a new admission record to be created. General admissibility standards apply.

- f. What is the default period of entry for a B2 traveler? Is it common to limit admission to a few weeks their immediate plans are to attend a short-term event?

The default period of admission is 6 months. Admission will be shortened for passport validity. A Supervisor's approval is necessary if limiting the stay based on traveler's intent.

- g. In what circumstances would a foreign national be admitted for one day?

Parolee for DACA recipients. (DACA recipients are not admitted but paroled into the US. Passport validity is a reason why a traveler may be "admitted" for one day.)

4. NAFTA L-1 Petition

We understand that Chicago CBP does not process any NAFTA petitions. As a NAFTA L-1 petition is receipted at a land port of entry or pre-flight inspection, it is then forwarded to USCIS Service Center for receipting and issuing an I-797 Approval Notice.

- a. Can Chicago CBP confirm if it is necessary for the L-1 visitor to carry the I-797 for subsequent travels?

No, an officer will be able to see that the L-1 visitor has been processed by another port of entry. They may be referred to Secondary, but not necessarily.

- b. In recent experience, there has been some delay in the receipting and issuing I-797 approval notices by the USCIS, up to 5 weeks from the day of the submission of the NAFTA L petitions. It is possible some L-1 visitors may have travelled outside of the US in the meantime. Would L-1 visitors be able to return to the US while the USCIS is still receipting and issuing the I-797 approval notices? There are some reports that some port of entry will not admit L-1 visitors without the I-797 approval notices.

Yes, L-1 travelers previously approved and processed by another port of entry would be admitted even if the I-797 is still in process.

5. I-526 Immigrant Petition for Alien Entrepreneurs

Many of the immigrant visa applicants under the EB-5 category reside outside of the US and are waiting for the visa numbers to become current to apply for an immigrant visa. A significant backlog (3-6 years) of the EB-5 visa number is currently in place for particularly Chinese nationals. We would like to know how Chicago CBP would determine whether the following visa holders are considering having immigrant intent and are therefore inadmissible.

- a. B-1 visa holder: many Chinese nationals are now issued a 10-year B-1 visa. If the filing of I-526 is after the issuance of the B-1 visa stamp and the B-1 visitors are visiting the US to attend their child's graduation, conduct business meetings and negotiations, or tourism, a pending immigrant petitions typically result in a denial of admission into the US?

No. CBP will not deny admission simply based on the filing of I-526.

- b. Would the same answer apply to F-1 visa holders, provided that they continue to attend school and pursue their degrees as outlined in their I-20s?

Same as above.

6. Travelling LPRs

- a. Is an I-193 waiver required for the admission of a Legal Permanent Resident with an expired I-551 card (and no I-551 stamp)?

No. A LPR will be admitted and advised to file an I-90.

- b. Any different if there is a pending Naturalization application?

No difference.

- c. Where an I-193 waiver is required, is it more common to require or waive the fee?

CBP will generally waive the fee for the first occurrence for LPRs requiring a waiver.

- d. Where a permanent residency was granted subsequent to disclosed arrests, is it necessary for LPRs to continue to carry dispositions? Does the grant of legal permanent residence (and any I-601s waivers required by the arrest) clear any records in CBP systems that might trigger secondary inspection? Are these records (of LPR/601 approval) only available in secondary?

CBP recommends carrying the necessary court documents to help clarify any issues that may arise in inspection.

No, the grant of lawful permanent residence does not necessarily clear any triggers for secondary inspection.

Primary officers may refer LPRs to secondary inspection when clarifying information is not immediately available to them. It is not immediately available to officers that arrests were disclosed, even if prior to grant of permanent residency.

- e. Can a person who has been granted LPR status on the basis of refugee/asylee use Re-entry Permit in lieu of a passport because they are unable to apply for a passport from their home country or otherwise unable to obtain a passport?

Yes.

7. Humanitarian Parole at the Port

Humanitarian parole is used sparingly to bring someone who is otherwise inadmissible into the United States for a temporary period of time due to a compelling emergency.

Humanitarian parole can also be issued by U.S. Customs and Border Protection (CBP) if the traveler seeking the parole is at the U.S. border. As each parole issued by CBP is issued at the discretion of the Port Director, please contact the specific Port of Entry where the parole will be sought to inquire about procedures.

- a. How many of these were requested/granted in the last year?

CBP does not keep a record of this but it is estimated to be less than 10 within the last year.

- b. What is the local process for requesting this parole?

Email the Port Director in advance to request such parole.

- c. How is the boarding process handled with the airline where the applicant does not have valid entry documents?

Where necessary, CBP will coordinate with the airline to facilitate boarding.

- d. Is there a fee?

It is \$65 but can be waived based on the circumstances.

8. Transgender Travelers

- a. How have CBP officers been instructed to deal with a foreign national who has undergone gender reassignment surgery, but their home country will not change their gender on their passport, and the FN clearly appears physically to be of a different gender than the gender indicated on their passport?

CBP officers are trained to handle this particular issue with sensitivity and professionalism in mind and will only ask questions as required to verify identity.

If a personal search is necessary, CBP officer rely on long standing guidance to accommodate the traveler and provide different gendered officers as required to search the person of a traveler in transition.

- b. Does this affect the validity of the passport with CBP? Do they ask the FN if this is in fact them? Will the FN's verbal confirmation of the circumstances be sufficient or should the FN travel with a medical certification of other documentation regarding gender reassignment?

No, their passport remains valid. Verbal confirmation is sufficient. No medical documentation or medical certification is necessary.

9. CBP Immigration Advisory Program

- a. Can you tell us about this program?

U.S. Customs and Border Protection Immigration Advisory Program is a force multiplier program that posts advisory personnel various foreign airports to assist with processing of flights bound for the United States. These unarmed, plain clothes officers discreetly assist airline and security employees with review of traveler information during the processing of U.S.-bound flights. They directly support host-country personnel with document examination and traveler security assessments.

- b. Can you direct us to a list of ports at which there are CBP Advisory Program officers or representatives?

Compared to CBP's preclearance operations, IAP and JSP provide a more limited level of coverage at international locations. Through IAP, CBP officers in plain clothes are posted at major gateway airports in Western Europe, with a presence in Asia and the Middle East including: Amsterdam, Frankfurt, London Heathrow, London Gatwick, Manchester, Madrid, Paris, Tokyo, and Doha. Building on the IAP concept, CBP launched the JSP, partnering with host country law enforcement to identify air passengers linked to terrorism, narcotics, weapons, and currency smuggling. JSP officers are posted in Mexico City and Panama City.

10. TRIP Inquiry

- a. Is there a way to amend or otherwise augment a TRIP inquiry with information regarding a subsequent, similar incident? Can two incidents be linked in some way?

It can be followed up via email, referencing the initial TRIP request.

- b. Is there a standard processing time for a TRIP inquiry?

No.

11. FOIA Inquiry

For an effective FOIA, we are required to identify what documents we require. Often we do not know that types of documents exist.

- a. What types of documents would be available to DHS/CBP and/or DHS/TSA with regard to incidents occurring outside of the United States (not by a CBP Pre-clearance operation), but rather security officers of US airlines at foreign airports or local security officers at foreign airports who are agents of such airports? For example, any "lookouts" or similar documents that might have been generated by TSA? Documents that relate to the acronym SSSS being printed on a boarding pass? Or the acronym CITS being affixed to the outside of a passport?

These acronyms may be used by the TSA or local contractors of the airlines to perform documents checks and have no bearing on CBP's process.

12. I-94 corrections

Are there specific I-94 errors that require an individual to appear at Deferred Inspection for correction (rather than via email)?

No.

13. CBP Liaison Contacts for Chicago Port

Updated I-94 Correction at Deferred Inspection

- a. Try I-94 email correction, or appear in person. i94chi@cbp.dhs.gov (please attach your G28, client passport bio page and any other relevant documents)
- b. After 48 business hours, you can follow up with Steven McKlem or Samuel Merritt, Supervisors located at Chicago O'Hare International Airport. STEVEN.D.MCKLEM@cbp.dhs.gov SAMUEL.MERRITT@cbp.dhs.gov
- c. If your issue is not being addressed/resolved and you have first tried to contact Supervisors McKlem and/or Merritt, further follow up can be done with Chief Paolo Bellantuono, who oversees both Secondary and Deferred Inspection. PAOLO.BELLANTUONO@CBP.DHS.GOV

O'Hare Emergency Contact

In an emergency (matters involving an individual presently in our custody/detention), attorneys may reach out to any supervisor on duty at the Secondary Inspections Unit (SIU) as CBP understands they may have information which could be helpful for CBP. Phone: (773) 686-3000.

Non-Emergency Contact

Contact Chief Paolo Bellantuono via email. PAOLO.BELLANTUONO@CBP.DHS.GOV

Allegations of Unprofessional Conduct by CBP

Supervisor Sean Gillis is the Professionalism Services Manager. SEAN.E.GILLIS@CBP.DHS.GOV