

**AILA- CHICAGO CHAPTER &
CBP FIELD OFFICE LIAISON MEETING**
October 28, 2016

AILA Chicago Chapter Committee Members Present:

Nell Barker, Co-Chair
Tzu-Kai Lo, Co-Chair
Leah Duckett
Kristen Harris
Maria Kallmeyer
Susan Maclean
Tejas Shah
Fazila Vaid

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

Robert White, 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 Airport

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, Watch Commander
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
James Saunders, Professionalism Service Manager, james.saunders@cbp.dhs.gov

Midway Airport

Joseph Chavez, Chief
Florian Moran, Supervisor
Vijender Sawal, Supervisor
Sean Gillis, Supervisor

Deferred Inspection

Val Parks, Supervisor, valiant.parks@cbp.dhs.gov

2. Inspection/Admission Practices- General

- The statute at INA 212(a)(7) states (as paraphrased below) that any nonimmigrant who:
 - I) Is not in possession of a passport with a validity for a minimum of six months beyond the period of intended admission, **OR**
 - II) Is not in possession of a valid nonimmigrant visa or border crossing card at the time of admissionis inadmissible.

- The regulation at 8 CFR 214.2(h)(13) states that:
 - (A) A beneficiary **shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends.** The beneficiary may not work except during the validity period of the petition.

We see many instances where the CBP officer issues Form I-94 for an H-1B nonimmigrant only to the expiration date of the beneficiary's passport, even though the regulation states that beneficiaries should be admitted to the validity period of the petition. If the beneficiary does not notice that the date on their I-94 does not match the date on their petition, they could end up being subject to a three or ten year bar to readmission to the U.S., a significant penalty.

- a) What authority does CBP rely on to limit H-1B admission to passport when the applicant has a valid visa?

The passport is the controlling document for the period of admission. CBP will not admit beyond the validity of the passport or to six-months prior if not part of six-month club.

- 8 CFR 212.1 – Documentary requirements for nonimmigrants.
- 8 CFR 214.1 - Requirements for admission, extension, and maintenance of status.

- b) Although the regulations at 8 CFR 214(h)(13)(i)(A) provide that beneficiary of an approved H-1B petition **shall be** admitted to the United States for the validity period of the petition many foreign nationals are admitted only to the

expiration of the petition. Can individual foreign national who wishes to be admitted for the extra ten days request this at the time of admission?

Yes.

3. NIV Admissions

a) The last memo on **H-1B1** admission policy is from 2004 and indicates that the system was yet to be updated to provide for the new (in 2004) treaty category of H-1B1. Members have experienced repeat instances of H-1B1 holders being admitted under H-1B even when informed by the foreign national during admission. Significant differences in the conditions of status exist for H-1B and H-1B1 status such as:

- H-1B1 is only a 12 month admission, subject to a valid LCA, with no overall limit.
- No license required
- No petition required, so often there is no I-797C approval notice.

Are there any system limitations that prevent distinguishing an H-1B admission from an H-1B1 admission?

H-1B1 applicants can be admitted under the HSC admission category in CBP Systems.

b) We know that Blanket L-1 applicants are supposed to be admitted for three years on their initial entry and then through the expiration date on their I-129S form after that. When admitting a person through the duration of their I-129S form, do you use the validity dates indicated by the Consulate on the Page 1, or the validity dates in Part 4.

Typically should be the validity date on page one of the endorsed I129S. If not specific date given, three-year admission is entered.

c) Can CBP Chicago confirm that a border crossing card and a valid Mexican passport is generally sufficient for a Mexican citizen to enter the US by air as B-1 visitor?

Yes, provided otherwise admissible.

The Nexus card is the single document necessary at a land port. Nexus card holders do not need passports. Nexus is linked to the card holder's underlying NIV status, therefore, it would be necessary to update the NIV validity dates accordingly to ensure Nexus has the most updated NIV admission period.

d) When there is discrepancy in the authorized period of the stay in Form I-94 and the admission stamp, can you confirm that the legal document controlling status

is Form I-94?

I-94 is the controlling document. CBP officers should follow through its internal process to update the I-94 should it determine it is necessary to cut a foreign visitor's default six-month admission short.

4. Derivative Admissions

Under the Pearson Memo dated Jan. 29, 2001, and a Feb. 14, 2001, DOS cable, an H1B visa holder who has changed employer does not need a new visa stamp if they are:

- (1) otherwise admissible;
- (2) has a valid unexpired passport and visa;
- (3) can establish previous H1B status; and
- (4) presents the filing receipt (Form I-797) for the new H1B or other evidence of timely filing.

- a) In a scenario where the H-1B status holder has filed to transfer employment but a derivative has not filed a new H-4 petition with USCIS to mirror the H-1B status holder's new expiration date, is the H-4 status holder admissible based upon the original H-4 visa stamp and new H-1B petition (so long as the visa is valid at the time of admission), or must the H-4 status holder file a new petition tied to the new H-1B petition to be deemed admissible?

H-4 visa holder is admitted based on the status of the H-1B and should carry a copy of the new H-1B approval notice. If H-1B principal's applicant's name is not on the H-4 visa stamp, a copy of marriage certificate would help.

For Canadian TD applicants, a copy of marriage certificate is necessary since there is no visa stamp.

- b) If the H-4 status holder does not have to file a new H-4 petition and obtain a new H-4 visa, what documents would be deemed sufficient for the person to be considered admissible?

See above.

5. Subsequent entries after approval

- a) Is there any guidance provided to officers regarding when it is appropriate to deny admission to a foreign national holding either an approved USCIS I-797 or an I-94 granted by another port of entry?

No formal guidance. Admission would be determined at the time of interview.

- b) Is it appropriate to deny admission where there is no new information provided during the interview, but there may be a difference of opinion regarding whether for example, an applicant's degree is sufficiently related to the TN category, or

whether the knowledge possessed by the applicant is specialized enough to support an L-1?

Supervisors would have to be conferred to deny admission that has been reviewed and approved by a different port.

Some ports might prioritize looking into cases versus other uses of resources. There is no written guidance as each port would have its own priorities of resources.

- c) If there was a previous admission by another port of entry, are officers instructed to contact that port of entry to confirm whether the facts presented are the same?

Normally not but might contact the port that issued original admission to confirm certain details and issues upon admission.

- d) If there is an I-797 approval from USCIS that is being overturned, are officers required to inform USCIS?

No.

- e) If yes, what information are officers supposed to include in the memorandum to USCIS?

Not applicable.

- f) Where a memorandum is submitted to USCIS recommending revocation and USCIS reaffirms the previous approval, will the port of entry accept the approval?

Not applicable.

- g) Where a memo is submitted to USCIS recommending revocation and USCIS does not act on it, what recourse does the applicant have? Can they obtain a copy of the memo from the port?

Not applicable.

6. TN status for professional positions with managerial functions

- a) If a TN professional position title that denotes some level of managerial functions, would CBP deny TN status because of the managerial functions even if the underlying job functions are of professional nature?

TN can still be granted as long as the majority of functions still relate to the professional occupations. The analysis would be relating to the percentage of time using professional degree.

- b) For example, if an applicant is applying for a TN with a job title of Engineering Manager, would CBP deny the application because this position is somehow managerial?

Detailed job description would also factor in the decision. CBP officers need to determine the degree relevancy to the professional functions.

7. K-1 admission period

The following timing constraints apply to a K-1 fiancé(e) of a U.S. Citizen:

- 8 CFR 214.2(k)(5) limits approval of an I-129F petition by USCIS to a period of four months, during which time the beneficiary must prepare and present a visa application to a U.S. consular post abroad. (Though the I-129F approval period may be extended by the consular officer, if necessary to complete visa processing).
- U.S. Department of State visa reciprocity rules routinely authorize issuance of K-1 visas based on an approved I-129F petition for a validity period of up to six months.
- 8 CFR 214.2(k)(5) authorizes a nonimmigrant in K-1 status to get married and apply for adjustment of status "within 90 days of the beneficiary's entry" in K-1 admission to the United States."
- 22 CFR 41.112(a) provides that a nonimmigrant may be admitted to the United States any time during the validity of his or her visa, if otherwise admissible.

Given the lack of a statutory or regulatory requirement to maintain a valid I-129F petition for admission in, or the duration of, K-1 status, **please confirm** that CBP will admit individuals with valid K-1 visas issued by the U.S. Department of State for a period of 90 days, even if the underlying I-129F has expired between the time of visa application and the application for admission to the United States in K-1 status.

K-1 will be admitted for 90 days with a valid visa.

8. ESTA/Visa Waiver Program

- a) If a traveler is denied ESTA due to a CIMT inadmissibility ground, but the traveler applies for a visa and is approved (after obtaining the necessary security clearance), is that traveler forever barred from using ESTA again due to an affirmative CIMT response?

Yes, it is likely a permanent bar for ESTA, pursuant to regulations.

- b) Is it possible to be reinstated in ESTA once a successful visa application is submitted to a foreign consulate and subsequently approved?

No.

9. Pending LPR Entry Documentation

- a) If an individual that has been granted Advance Parole Document based on pending I-485 Application to Adjust Status but while abroad has misplaced the original I-766 Combo Card or Form I-512L, will that foreign national be paroled into U.S. using photocopy of Combo Card/I-512L or original of the approval notice granting such parole?

They could be paroled in and sent to Deferred Inspection to present original documents, if still available.

- b) If not, what documents would CBP require for individual to present in order to paroled back into the U.S.?

Passport along with other documents including a receipt number or A number to allow CBP verify advance parole.

- c) Are there any plans of extending the "Travel History" feature on the I-94 CBP's web site to include LPR travel information?

No – can apply for a FOIA to get travel history.

10. Notice to Appear

When an NTA has been issued by CBP but not served on EOIR yet, what is the proper procedure to request that the NTA be cancelled?

If the NTA was originally issued by CBP, you may appear at Deferred Inspection to request an inquiry. If it was sent to the National Records Center, it could be returned to Deferred Inspection to allow CBP to determine who takes the next action, either ICE or CBP, to give the card back, if applicable.

11. Secondary Inspection/Detention

- a) What is the average wait time for an individual subject to Secondary Inspection?

CBP Chicago does not track wait time, but 3-4 hours during peak times is possible.

Processing times will depend on many factors: time of day, day of week, volume and type of inquiries required. Usually similar cases are triaged together to get through the secondary inspection quickly.

- b) Are the CBP detention standards laid out in the CBP National Standards on

Transport, Escort, Detention, and Search (Oct. 5, 2015) applied routinely to all foreign nationals in Secondary Inspection?

Yes, these standards apply to all.

- c) What are the primary restrictions that are observed? For example, it is indicated that pregnant women are to be provided food and beverages at least once every 6 hours with at least two hot meals, and that detention for any individual should last no longer than 72 hours.

Chicago CBP adheres to all of these requirements and standards. Sufficient food and beverages are provided based on the schedule and upon request. Most return flights are within 24 hours

- d) How are detainees informed of the availability of food and beverages?

Officers and Supervisors provide food and beverages. It can also be provided upon request.

- e) How is the application of these standards tracked?

12. Update on I-94 system

Do you have any general information about the I-94 web site change? What was the organizational goal of the update?

Partially the change was to incorporate information collected at the land borders.