

## August Chapter meeting minutes

NMD met at 11:15 and received an educational presentation from Nick Coenen on H1B basics for the New practitioner

Educational Presentation: Implications of USA v. Ruth

Speaker: Jacob Briskman, Jacob Briskman, Attorney at law

- I. Educational presentation (see power point)
  - a. Seventh circuit case
  - b. many state laws are more broader than the federal definition
  - c. Illinois definition includes positional isomers while the federal definition does not
  - d. Holding may apply differently to people depending on whether 212 or 237 comes into play
  - e. 212 – may apply if they admit acts which constitute the essential elements of a (federal cocaine conviction)
  - f. Moving forward it makes sense to look at other drug offenses to see if they are more broad than the federal definition
  
- II. New Business
  - a. Defenders for All – Beth Hoffman
    - i. We announced our support
    - ii. Cook County PD is trying to have immigration specialists on their staff
  
  - b. DACA update
    - i. June 18 SCOTUS found DACA rescission was arbitrary and capricious – DHS v. Regents of the University of California
    - ii. On July 28 Chad wolf Acting DHS secretary issued a new memo
      1. Withdrew memos withdrawing daca from 2017-2018
      2. Rejects all pending and future initial requests for daca
      3. Reject pending and future AP apps absent exceptional circumstances
      4. Shortens period of DACA to one year
  
  - c. Annual Conference Recap – Beth Hoffman
    - i. Some technical difficulties but overall well run and produced
    - ii. All of the sessions are available on demand through AILA
    - iii. Next year is to have an in person conference
    - iv. We don't have recordings yet – Nell already contacted hq
  
  - d. COVID Agency Procedure updates – Matt Kriezelman

- i. Social distancing measures in place but varying degrees of compliance from day to day

### III. Committee Reports

#### a. CBP – Kathryn Weber

- i. New port director Carl Shane Campbell
- ii. Started in June
- iii. No change to protocols
- iv. Officer Normandy is going to be going to a different port – he was supervisor – sometime in November
- v. They are following hhs cdc guidelines
- vi. Cdc is doing health screenings after inspection
- vii. Masks are available for any traveler who wants one
- viii. We will see deferred inspection at ohare
- ix. Not many travelers at the moment at T5- 1/10 of normal traffic
- x. Secondary has Social distancing issues
- xi. Covid is a factor they will consider for returning LPRs who are stuck overseas
  - 1. Make sure to document the reasons why the LPR couldn't return
  - 2. Show previous travel arrangements which were cancelled
- xii. Adverse decision – you can go up the chain of command
- xiii. Expressed concern of I-407 use at port – they seemed receptive
- xiv. NIE (National Interest Exemption) requests should be made first to state – CBP doesn't consider themselves to be an appeal of the state decision
- xv. Process seems to work well – only a few days to decide – approving most of them – make an economic argument
- xvi. ESTA v. NIE – two different processes that have to be applied for separately
- xvii. NAFTA is now USMCA – TN/TD process is exactly the same –
- xviii. Minutes will be released shortly

#### b. NMD – Emily Summers

- i. Mentor list is being updated
- ii. Look and see if you want to be added or taken off – contact Emily or Milli

#### c. CLE – Ivonne Figueroa- Castro

- i. Make sure to sign up on the google forms sheet
- ii. They have to use PCAM – give some time as it takes awhile to put together
- iii. they are currently working on putting together the July CLEs

#### d. USCIS District Director – Rich Hanus

- i. No in person meetings anymore

- ii. No regular communication
- iii. There is communication and activities between the committee and the local office
- iv. Concerns are being communicated to them
- v. We submitted a list of cases that have been pending for over 1 year past interview – they have been received and are being addressed
- vi. Committee has been compiling messages from the listserve
- vii. Can reach out to anyone on the committee if you have questions (see committee list)

e. Media – Fiona McEntee

- i. Email [socialmediaailachicago@gmail.com](mailto:socialmediaailachicago@gmail.com) – with any items to share to social media
- ii. New AILA Chicago website – original content is good – they are looking for blog posts to include –
- iii. Think immigration blog
- iv. Can contact Fiona with questions [fiona@mcenteelaw.com](mailto:fiona@mcenteelaw.com)

f. Law Students – Rudy Monterrosa

- i. Want to increase law student engagement
  1. Increase AILA affiliated student groups – contact rudy if you have a connection
  2. Increase mentorship opportunities
    - Want at least one webinar or lunch meeting
  3. Increase internship opportunities

g. EOIR – Kevin Raica

- i. Liaison has been trying to get updates from the court and have been met with silence
- ii. Last week the courts(detained and non-detained) shut down – only found out about the shutdown through unofficial sources
- iii. Learned over the weekend that they were going to be reopening but were closed because of the unrest in Chicago
- iv. Judges are on 2 week rotations – we don't know if that's going to continue
- v. No information about the VJ2 or Giambastiani dockets.

IV. Announcements

**a. Please save the date for the next Chapter Meeting September 14, 2020 at 12:15 PM**

b. Immigrants' List Civic Action – Roy Berg

- i. We can contribute to civic action
- ii. Immigrants list is partnering with AILA to try to impact the election on immigrant related issues
- iii. Suggests that we contribute \$5000 to immigrants list
- iv. EB will take up the issue prior to the September meeting
- v. Suggestion from Mike Jarecki to donate at least one consultation fee to immigrants list PAC



Standing in Solidarity

## Robert S. White

Principal, Schaumburg

P 847.734.8811

Bob White advises and works with companies from a variety of industries on all types of business nonimmigrant and immigrant visas (“green cards”) for their employees, managers and executives. He also represents and defends companies in U.S. Department of Labor (DOL) H-1B Labor Condition Application (LCA) audits, Immigration and Customs Enforcement (ICE) Form I-9 audits, and advises on avoiding the penalties often incurred in these actions.

[Learn More](#)

Bob was Chair of the Chicago Chapter of the American Immigration Lawyers Association (AILA), a member of the AILA Board of Governors, a member of AILA National’s ICE Worksite Enforcement Committee, Chair of AILA National’s Social Security Administration (SSA) Liaison Committee, and a member of the AILA Chicago Chapter’s DOL Liaison Committee. He is currently a member of AILA National’s DOL Headquarters Liaison Committee with a focus on the Department of Labor’s PERM labor certification processes and H-1B LCA audits.

An immigration counselor for numerous colleges and universities, Bob is a member of the leadership team of the NAFSA: Association of International Educators’ Region V. He is also an active advocate for the reform of the U.S. immigration laws and frequently travels to Washington to meet with Congressional representatives. Notably, Bob speaks regularly on the topic to international educators, business executives and religious leaders, and was a member of the Immigration Reform Taskforce of the Archdiocese of Chicago.

Moreover, Bob has presented programs at several AILA conferences on how to structure and process applications to avoid problems with the DOL, U.S. Citizenship and Immigration Services (USCIS) and SSA. He has also participated in AILA seminars and webinar for other immigration attorneys on managing and avoiding various DOL PERM labor certification issues. In addition, Bob has lead seminars for the National Association of Computer Consultant Businesses and the Illinois Landscape Contractors Association, and routinely conducts immigration seminars for human resource managers at manufacturing, technology and healthcare companies. He regularly speaks on immigration topics at colleges, universities, trade and professional schools on how international students and faculty can properly maintain their status and obtain employment authorization.

Prior to joining the firm, Bob was an immigration assistant to the former U.S. Senator Alan J. Dixon, and established a business immigration practice in a suburban Chicago law firm.

## Practice Areas

- Immigration

## Education

- IIT-Chicago-Kent College of Law, J.D., 1993
- University of Notre Dame, B.A. Government, with honors, 1990

## Admissions

- Illinois

## Experience

Provided advice to companies in obtaining H-1B status for advanced practice nurses and other professions that do not clearly qualify for H-1B classification.

Assisted companies in obtaining working visas (including but not limited to H-2B, O, P, L, E, Q, R and TN status) for individuals who did not qualify for H-1B status.

Guided companies during H-1B and L-1 site visits as part of the USCIS' Fraud Detection and National Security Administrative Site Visit program; helped companies in responding to Notices of Intent to Revoke (NOIR) issued from the USCIS after the site visits.

Advised consulting companies in documenting the employer-employee relationship in the H-1B program.

Recommended to companies how to overcome challenges by the DOL during PERM audit and PERM supervised recruitment stage of the employment-based immigrant visa (green card) process.

Counseled companies about the sufficiency of their recruiting efforts to qualify their labor certification applications for the PERM processing.

Guided companies in documenting for the DOL that their labor certification applications qualify for PERM processing regardless of company and/or industry layoffs.

Assisted individuals in evidencing for the USCIS that they are extraordinary in their fields and thus they avoided the labor certification stage of the employment-based immigrant visa (green card) process.

Provided advice to companies in avoiding significant monetary penalties from the DOL as part of the H-1B Labor Condition Application process and during DOL enforcement actions.

Advised individuals how to obtain family-based immigrant visas (green cards) based upon marriage to a U.S. citizen.

Counseled individuals on the benefits of consular processing vs. adjustment of status during the last stage of the green card process.

Overcame objections by consular officials in issuing visas to clients by appealing to the U.S. Department of State's Visa Office and by responding to NOIR from the USCIS.

## Memberships

American Immigration Lawyers Association - National's DOL Headquarters Liaison Committee

National Association of Foreign Student Advisors - Association of International Educators' Region V

## Distinctions

- *Leading Lawyers*, 2003-2020
- *Illinois Super Lawyers*, 2019-2020
- *The Best Lawyers in America*, 2018

## **AILA CHICAGO CHAPTER PERM OVERVIEW/AUDIT UPDATE**

**Presenter: Bob White**

**Masuda Funai Eifert & Mitchell, Ltd.**

### **Current PERM Audit Language – Sample Template 1**

Pursuant to 20 CFR § 656.24(b)(2)(i), the Certifying Officer must consider a U.S. applicant able and qualified for the job opportunity if the worker, by education, training, experience or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupations as customarily performed by other U.S. workers similarly employed. A U.S. applicant is able and qualified for the job opportunity if the applicant can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

O\*NET is an online resource utilized to identify normally acceptable requirements of education, training and experience, or combination thereof, for SOC Job Codes. If any of the requirements for the job opportunity differ from those identified as normally acceptable, the employer should submit documentation establishing business necessity and address how the requirements at issue apply to any U.S. applicants. Unsupported statements, mere assertions of fact without the submittal of supporting documentation, and declarations of employer preference, convenience, or efficiency are insufficient to meet the requirements below.

- a. If the employer rejected U.S. applicant(s), explain what process or steps the employer conducted to assess each applicant. If the applicant(s) do(es) not meet employer's requirements as indicated on the ETA Form 9089, the employer must explain how each applicant's education, experience and training does not qualify him/her for the job opportunity.
- b. If the employer requires one specific educational degree for a job opportunity, the employer must explain in detail, why only that particular degree is acceptable for the job opportunity and explain, in detail, the exclusion of similar degrees.
- c. If a job opportunity is for an advanced degree, the employer must explain in detail, why a lower degree in the same field, and experience, is not acceptable for the job opportunity.
- d. Please explain, in detail, why each U.S. applicant could not have attained the skills necessary to perform the job duties listed in Section H of the ETA Form 9089 during a reasonable period of on-the-job training. The reason(s) an applicant cannot be trained for the job opportunity must be specific to each applicant.
- e. If the employer rejected any applicant on the ground that the applicant is not a U.S. worker during the course of recruitment, please provide a statement, along with supporting documentation, explaining what process or steps the employer conducted to assess each one of these applicant(s). The statement must include how the employer

determined that the applicant was not a U.S. worker as defined under 20 CFR § 656.3; and therefore, was lawfully disqualified for consideration of the job opportunity.

### **Current PERM Audit Language – Sample Template 2**

The job experience required by the employer in Section H- 8 of the ETA Form 9089, \_\_\_\_\_, is beyond that normally required for the job opportunity as defined by O\*Net. Please provide an explanation and documentation supporting the business necessity for this requirement. Unsupported statements, mere assertions of fact without the submittal of supporting documentation, and declarations of employer preference, convenience, or efficiency are insufficient to support business necessity.

Business necessity must be provided for the minimum baselines identified by O\*Net; this includes any required special skills, training, or qualifications listed on the ETA Form 9089. For example, Job Zone 4 occupations indicate an SVP level range of 7<8. This range is equivalent to over two years up to and including four years. The employer must provide business necessity for any requirement exceeding the minimum baseline requirement of SVP level 7.

The listing below includes examples of supplemental documentation. This list is not exhaustive rather it provides the employer with evidentiary recommendations for establishing the business necessity standard.

1. A detailed statement from the employer's Department/Division Head, or other suitably knowledgeable representative for the employer, explaining the complexity of the job opportunity as defined by Section H of the ETA Form 9089, how the requirement(s) at issue is/are directly related to performance of the specific job duties, and any other pertinent information.
2. Evidence of prior hiring practices to include: copies of resumes of incumbents documenting what is customarily required for the same or similar job opportunities; list, chart or similar document of current employees in the same or similar job opportunity and their qualifying background, education, experience or combination thereof. The employer should redact any sensitive information.
3. Opinion statement by an expert in the field explaining the complexity of the job opportunity and how the requirement(s) at issue is directly related to performance of the specific job duties.
4. To demonstrate the requirements at issue are normal to the occupation within the industry, the employer may submit evidence from external sources establishing the industry standard, such as advertisements for the same or similar occupations in the industry.
5. If a job opportunity did not previously exist within the business, the employer can justify the need for the specific requirement referenced above by providing documentation showing any new demands made on the employer, such as copies of contracts, new program explanations, client specifications, etc.

6. Other appropriate document(s) as determined by the employer establishing business necessity for the referenced issue.

### **Current PERM Audit Language – Sample Template 3**

As identified in the regulations at 20 CFR § 656.17(l), the employer must be able to demonstrate the existence of a bona fide job opportunity. Based on the information provided in the application, the Certifying Officer needs additional documentation (listed below) to evaluate whether the job opportunity has been and is clearly open to any qualified U.S. workers.

The employer must provide copies of the following documents and information (when applicable):

1. A copy of the articles of incorporation, partnership agreement, or similar documents establishing the employer.
2. Any business licenses held by the employer and/or individuals within the company necessary for the operation of the business and/or services provided.
3. A list and/or organization chart of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles, and positions in the business structure.
4. Copies of Federal Tax Returns for the employer from 2017 through the current year. If Federal Tax Returns are not available for the current year, the employer may provide copies of Federal Quarterly Tax Forms (940 and/or 941 forms) or other similar Federal tax documents.
5. Copy of the employer's by-laws, if applicable.
6. A statement from the employer addressing the following:
  - a. The relationships of all corporate/company officers and shareholders/partners to each other and to the foreign worker.
  - b. The relationships of all corporate/company officers and shareholders/partners to each other and to the foreign worker.
  - c. The total investment in the business entity and the amount/percentage of investment of each officer, incorporator/partner and the foreign worker.
  - d. The employee(s) within the company with payroll sign-off responsibility.
  - e. The names and titles of all officials with the authority to interview and hire applicants for positions within the organization; and the names of the officials who have control or influence over hiring decisions involving the position for which labor certification is sought.
  - f. When the job opportunity listed in Section H-3 was created, the individual(s) who previously held the position and the duration each individual held the position, prior to when the foreign worker started working in the job opportunity.

#### **Current PERM Audit Language – Sample Template 4**

The employer filed the ETA Form 9089 Form to employ a full-time \_\_\_\_\_. However, given the nature and size of the employer's business, it is not certain the employer has the need to employ a permanent full-time \_\_\_\_\_. Therefore, the employer must demonstrate that a bona fide full-time job opportunity actually exists and is available to U.S. workers, per the Department's regulations at 20 CFR § 656.3, which states in part, employment means permanent, full-time work by an employee for an employer other than oneself and 20 CFR § 656.10(c)(8) the job opportunity has been and is clearly open to any U.S. worker.

The employer must demonstrate and provide evidence to establish the job opportunity of \_\_\_\_\_ constitutes permanent full-time employment within the employer's business. The employer must provide a statement addressing the following questions and provide any supporting evidence and/or documentation:

- 1) When was the job opportunity of \_\_\_\_\_ created within the employer's business?
- 2) What caused the employer to create the job opportunity, to include but not limited to, contractual obligations, business expansion, unforeseen circumstances or other event? You must provide copies of any applicable documents referenced in the statement.
- 3) How many employees currently hold or previously held this job opportunity? You must indicate who previously held the job opportunity/position, the required degree or experience held by the individual(s) qualifying them for this position, the duration each individual held the position, and if applicable, who currently holds the position.
- 4) How many hours per week does/did each employee work? You must provide supporting evidence of payroll records or W-2/1099 Statements.
- 5) If this is a newly created job opportunity, what change(s) in the business' operation caused the position to be created? Document how this job opportunity constitutes full-time employment: i.e., at least 35 hours per week.
- 6) Provide a more detailed description of the job duties required of the job opportunity to include specific tasks, work products, etc. and how it relates to the employer's current operations.

## CHICAGO OFFICE OF CHIEF COUNSEL

	*ERO*	*MLK*	*JAL*	*JIP*	*SMN*	*RJR*	*SBC*	*DutyA*	*DutyB*	*DutyC*	*DutyD*
9/7/2020	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
9/8/2020	Keeley	Zeld	Young	Steed	XXXX	Greene	Corcoran	Bhalakia	Pennix	Kostich	Keeley
9/9/2020	Greene	Johnson	Prillaman	Grover	XXXX	Crites	Venci	Steed	Pennix	Hollander	Greene
9/10/2020	Greene	Oduala	Steed	Zeld	Hollander	Corcoran	Venci	Bhalakia	Grover	Young	Greene
9/11/2020	Venci	Kostich	Johnson	XXXX	XXXX	XXXX	Greene	Zeld	Prillaman	Oduala	Venci

## Minutes from AILA-CBP Liaison Meeting

Meeting on August 7, 2020

### AILA CBP liaison committee members in attendance:

Mercedes Badia-Tavas  
Nell Barker  
Nicholas Coenen  
Kristen Harris  
Maria Kallmeyer  
Kathryn Weber

### **CBP Personnel**

1. 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  
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*

Shane Campbell, Area Port Director  
Michael Pfeiffer, Assistant Area Port Director (Passenger Operations)  
Hans Leiterman, Assistant Port Director, Tactical Operations  
Patrick Salgado, Chief Officer – Secondary Inspection (Admissibility)  
~~Paolo Bellantuono, Chief Officer – Secondary Inspection (Admissibility)~~  
Gwen Flowers, Chief Officer  
Jeffrey Toland, Chief Officer, Deferred Inspection  
Brian Bell, Watch Commander  
Brian Henke, Watch Commander  
Jaime Gray, Watch Commander  
Damian Montes, Watch Commander  
Marcos Jones, Chief Officer  
Timothy Borden, Chief Officer  
Ralph Picarilli, Watch Commander  
~~Corey Scudder, Chief Officer~~  
Sean Gillis, Supervisor  
~~Nelson Durant, Overnight Supervisor~~

Phillip Rodriguez, Overnight Supervisor  
Michael Lambermont, Overnight Supervisor  
~~James Saunders, Supervisor~~  
Juan C. Rodriguez, Professionalism Service Manager

*Midway Airport*

Joseph Chavez, Chief  
~~Robert Holthouse, Supervisor at Midway in the morning~~  
~~Val Parks, Supervisor at Midway in the morning~~  
Florian Moran, Supervisor  
Tommy Miller, Agriculture Supervisor

*Deferred Inspection*

Khashayar Normandi, Supervisor – will be relocating to another port and will be replaced.

**Communication Protocols**

2. Please confirm that the following communication protocols remain accurate and updated.

*Passenger Issues at O'Hare*

For an inquiry regarding a passenger currently at Terminal 5, please call first, asking to speak to an "SIU Supervisor on Duty," with the option of escalating to the Watch Commander.

- Terminal 5 CBP office, **773-686-2800** and ask for Supervisor on duty at SIU/Watch Commander.
- [ChicagoWatchCommander@cbp.dhs.gov](mailto:ChicagoWatchCommander@cbp.dhs.gov).
- Note: Watch Commanders are not on duty 24/7. Emails or calls outside of normal business hours will not be answered immediately.
- Attorneys can email the Watch Commander regarding issues with passengers arriving in the near future. That is an appropriate use of the e-mail address.

*Deferred Inspection*

SCBPO Khashayar Normandi ([Khashayar.E.Normandi@cbp.dhs.gov](mailto:Khashayar.E.Normandi@cbp.dhs.gov)) is the supervisor at Deferred Inspection. The contact information is:  
536 S. Clark Street, Suite 1035  
Chicago, Illinois 60605  
312-542-4928  
Hours are 8:00 a.m. - 3:00 p.m., Monday - Friday

I-94 correction issues

- a. Try I-94 email correction, or appear in person at Chicago Deferred Inspections. [i94chi@cbp.dhs.gov](mailto:i94chi@cbp.dhs.gov) (please attach your G-28, client passport biographic page, visa, admission stamp, I-94 record, and any other relevant documents).
- b. After 48 business hours, you can follow up with SCBPO Khashayar Normandi ([Khashayar.E.Normandi@cbp.dhs.gov](mailto:Khashayar.E.Normandi@cbp.dhs.gov)).
- c. If the issue is not resolved, please contact Jeffrey Toland [Jeffrey.L.Toland@cbp.dhs.gov](mailto:Jeffrey.L.Toland@cbp.dhs.gov).

General Policy Inquiry or Midway Specific Issue

If you have a general CBP policy inquiry for the local port, please contact Chief Joseph Chavez, he is our *primary liaison*. You can also reach out to Chief Chavez for any Midway specific issues.

Chief CBP Officer Joseph Chavez  
Midway International Airport  
Phone: 773-948-6330  
Cell: 312-933-6093; Fax: 773-948-6239  
[JOSEPH.A.CHAVEZ@cbp.dhs.gov](mailto:JOSEPH.A.CHAVEZ@cbp.dhs.gov)

Allegations of Unprofessional Conduct by CBP

Juan C. Rodriguez, Professionalism Service Manager, [Juan.C.Rodriguez@cbp.dhs.gov](mailto:Juan.C.Rodriguez@cbp.dhs.gov)

Follow-up

If you have not received a reasonable response on any of the above types of inquiries, please contact Michael Pfeiffer at [Michael.J.Pfeiffer@cbp.dhs.gov](mailto:Michael.J.Pfeiffer@cbp.dhs.gov).

**Facility Updates**

3. Are there any updates on O'Hare Terminal 5 renovations?

Construction has not yet started. Expected to be completed in around 2 years. Train is not yet in operation. Deferred inspections will move to Terminal 5 after renovations.

## Policy Changes

4. How have your priorities changed in the past 6 months? Are you reallocating resources or is there new funding for any new priorities? How are any new priorities changing your structure?

No priority changes of note.

5. Are there any updates on technology rollouts at our local ports?

CBP is continuing to move forward with Air Exit biometric program.

## Covid-19 Protocol

6. On behalf of our chapter, we thank you and the Chicago POE teams for your service in the front lines at this challenging time. Is there any guidance regarding COVID best practices you would like us to have members relay to their clients, to support the health and welfare of Passenger Operations?

CBP does not issue health guidelines to traveling community. They rely on CDC guidelines. CBP does not require that passengers present themselves in a particular manner, but passengers must comply with inspection, including a possible referral to CDC. CDC maintains permanent staff at O'Hare for enhanced health screening. Passengers need to remove masks for a brief period for biometrics collection (photo). But there is no mandate for masks from the traveling public.

7. How has the pandemic altered CBP's practices?

- a. Is CBP screening individuals for COVID vulnerabilities upon arrival?

Travelers with suspected health conditions are referred to a designated area for CDC health screening located in the area past the luggage carousels before leaving the area. CBP Officers have protocols. If they notice a traveler is ill, the traveler will be stopped to see CDC staff.

- b. In secondary?

The order of operations is primary inspection, then CDC health screening, then secondary inspection, so a health screen would occur prior to secondary inspection if applicable. Secondary inspection procedures have not changed. Traffic is 1/10<sup>th</sup> of normal, so there is an inherent distancing in secondary, but not enforced. CBP Officers in secondary have PPE. PPE is used at all times

interacting with traveling public. CBP would provide masks to travelers requesting or clearly needing PPE.

- c. In O'Hare holding/detention?

Same as above. This is in the secondary area.

- d. In transferring to ICE custody?

No changes on CBP's end. They are wearing PPE.

- 8. Is CBP continuing to detain arriving asylum seekers during the pandemic?

Yes. There has been no change with CBP as to how they process asylum seekers. ICE transfers also remain unchanged.

#### LPRs Issues

- 9. As you know, many Legal Permanent Residents have been stranded outside of the U.S. longer than expected because of COVID-19. They are weighing the health risks of returning with the risk of losing their permanent residence status for being out too long. While others are trying to return, but are unable to get a flight. CBP Chicago has previously confirmed that each case will be reviewed based on the totality of the circumstances.

- a. Can you confirm specifically that CBP is considering COVID-19 as a factor when making decisions on returning LPRs?

These requests are considered case-by-case based on a totality of the circumstances. CBP considers all information. They have considered all information, including COVID-19 and other health emergencies, under typical circumstances and follow normal protocol for review of such a decision. The person must show a valid justification with documentation of reasons for delay in returning and ties to the U.S. Supervisor approves all decisions.

- b. Can you confirm that following worldwide guidance to restrict travel is a reasonable act for LPRs abroad?

CBP won't provide guidance on international travel.

- 10. We continue to receive reports that I-407s are being completed in secondary inspection after CBP officers believe they have uncovered marriage fraud. We believe this inappropriately impinges on the due process rights of LPRs. With abandonment, in court the government must establish by "clear, unequivocal, and convincing evidence" that an

alien had abandoned his or her LPR status when such an alien has a colorable claim to LPR status. This burden of proof derives from the Supreme Court decision in *Woodby v. INS*, 385 U.S. 276 (1966) which set the standard for establishing deportability for LPRs. Signing a Form I-407, Abandonment of Lawful Permanent Resident Status, should be done freely without coercion or duress. We are concerned that the circumstances during inspection lead LPRs to sign I-407s because of the alternatives presented by officers include 5-year bars or further detention. An inspection with inadmissibility issues is not the situation that I-407s were created for, and the rights of LPRs should be better protected. We agree that marriage fraud is an issue, but that it is one that should be decided by a judge.

- a. Would you consider reviewing these concepts with officers and restricting the use of I-407s as an inadmissibility tool?

Not able to change national policy at the local level. Port Director Campbell will review policy and see what level of discretion they have locally.

- b. Would you consider requiring that any I-407s receive approval of the Port Director?

No. This is reviewed by a supervisor, but see above.

## Recent Presidential Proclamations

11. Thank you for providing the protocol for obtaining National Interest Exemptions (NIEs) to the recent Presidential Proclamations. We understand that you have the authority to grant those exemptions under 212(f), and have advised our members to send those requests to Supervisory CBP Officer Khashayar Normandi at [Khashayar.E.Normandi@cbp.dhs.gov](mailto:Khashayar.E.Normandi@cbp.dhs.gov).

The developed protocol by CBP Headquarters is for the applicant to first contact the Department of State, Consular Office with jurisdiction. It is helpful to first submit proof of contact with Department of State. With CBP, the Director of Field Operations sets policy.

Cannot use the CBP protocol as an appeal process following a Department of State decision. In other words, if the Department of State made a decision to deny the NIE on its merits, CBP will not re-visit the Department of State decision. However, if an attempt has been made and the applicant has been unable to obtain a response from the Department of State, it is helpful for the applicant to provide to CBP proof of his/her attempts. Requests are provided to Officer Normandi and reviewed by the Port Director.

Blanket exemptions include professional athletes plus one and P-1S support staff.

- a. How many requests for NIEs have you received and how many have been granted?

CBP does not track number of requests or approvals. However, they noted that they initially received several requests and have recently received one or two per week in last couple weeks. They feel they have been lenient. They evaluate the situations covered by the Presidential Proclamations and others including humanitarian factors and medical needs.

- b. After seeing some requests for NIEs, is there anything additional you would like us to share with our members about those requests? Is there specific documentation that would be helpful to you?

Provide any documentation that confirms the background and, if applicable, economic impact on U.S., including the hiring of local workers, supporting research on COVID-19, infrastructure support, serious medical conditions needing treatment in the U.S., etc. The more factors and documents, the better for the case.

12. Certain foreign nationals are exempt from Presidential Proclamations otherwise restricting entry to the United States based on familial relationships with U.S. citizens (USCs) and/or Lawful Permanent Residents (LPRs). The exemptions include spouses and certain children of USCs and LPRs, who are exempt from the bars to entry otherwise in force per Presidential Proclamations 9984, 9993, 9996, 10014, 10041, and 10052.

- a. Can you confirm that a marriage certificate, along with proof of the USC/LPR spouse's citizenship/status, is sufficient evidence for this exemption?

Yes

- b. Can you confirm that a birth certificate naming parents, along with proof of the USC/LPR parent's citizenship/status, is sufficient evidence for this exemption?

Yes. The family must bring familial documents to prove relationship including birth certificates and marriage certificates with passports and I-551 cards. The carrier through the RCLG – Regional Carrier Liaison Group, handles these clearances before boarding the flight.

13. Certain foreign nationals are exempt from Presidential Proclamations otherwise restricting entry to the United States based on their physical presence within the United States on a given effective date. This includes bars to entry otherwise in force per Presidential Proclamation 10052. Please confirm the types of documentary evidence

required for exemptions based on physical presence in the United States as of the effective date of a given PP.

CBP leadership have not yet encountered or heard of any issues with admissions in this situation. They can verify based on internal checks, but would accept any documentation that confirms physical presence in the U.S. on June 24, 2020, including I-94 History of Travel, pay statements, leases, receipts from purchases, etc.

14. Can CBP confirm that an individual with a valid nonimmigrant visa currently residing in a country subject to Presidential Proclamations 9984, 9992, 9993 and 9996 (temporarily suspending the entry into the United States of most individuals who were physically present in mainland China, Brazil, Iran, Ireland, the United Kingdom, or the Schengen Area in the 14 days preceding their attempted entry) can enter the U.S. after spending at least 14 days in a third country not subject to the Presidential Proclamations?

a. Is advance notification to the port of entry helpful in these cases?

No – do not reach out to the port in advance. These are regularly approved for entry without issue under normal procedures. This has not been an issue at O’Hare International Airport.

b. If so, how can we notify you of those cases before entry so that the travelers are able to board the plane? n/a

15. Has CBP shared any guidance regarding Presidential Proclamation exemptions with airlines in Europe flying out from airports where there is no CBP pre-clearance? Yes

a. Where an exemption applies, how will the airlines know whether to board that passenger?

CBP communicates with the airlines through carrier association – RCLG.

b. How does CBP specifically communicate the grant of a National Interest Exemption (NIE) to the airlines who control the foreign national's permission to board the plane?

See above.

16. The Department of State recently issued guidance on how individuals can obtain National Interest Exemptions (NIEs) of the recent Presidential Proclamations at Consulates abroad. If an individual receives an exemption from a Consulate abroad, CBP national has confirmed to AILA that CBP will honor that decision.

- a. How is the local port informed of Department of State action?

Messages sent through internal systems and emails. DOS should give the traveler a letter and/or email or an annotation on the laser visa stamp. The traveler can bring all this communication for the check-in and clearance process at the airport.

- b. Is there specific documentation of the exemption that individuals should carry?

See above.

17. Does CBP communicate or coordinate with the Department of State, Visa Office on National Interest Exemption (NIE) cases? If yes, please explain.

Yes. See above.

18. We'd like to understand whether there is overlap between ESTA and the Presidential Proclamation exemption process. If a foreign national is granted a new ESTA approval, can we assume that they also received an exemption to the Proclamations or is there a separate process to obtain the exemption. An ESTA clearance for the Visa Waiver Program does not give an automatic NIE.

An ESTA application is a distinct process. The Presidential Proclamation would not be a hurdle to receiving ESTA, so an exemption would need to be approved separately by DOS or CBP per set protocols

## TN

19. Are there any procedural or substantive changes in regard to the admission of business persons under Chapter 16 of the new USMCA that replaced NAFTA?

No changes for TNs.

20. Will TN/TD still be the designation for treaty-based professionals or will there be a new designation?

TN/TD is still the designation.

21. Are admission requirements for TN/TD the same as under NAFTA?

Yes.

**F-1s:**

22. In the context of COVID-19, will CBP accept scanned PDF print-out versions of signed I-20 forms from F-1 students at U.S. ports of entry?

Original is still required at the moment. If the original I-20 is presented, they can be cleared at primary inspection. A non-original may be accepted if it can be verified by CBP. CBP may issue an I-515A if they are not able to confirm a non-original I-20. CBP would like to remind F-1 travelers not to put Forms I-20 in checked luggage.

23. ICE has stated that new international students cannot be admitted into the U.S. if their program of study is entirely on-line.

- a. Other than the I-20 form, will CBP require new F-1 students to present any additional documentation as evidence that their program of study is sufficiently in-person?

The student must bring the I-20. The inspection will involve questions of the student and confirmation in SEVIS. Some DSOs are putting the information regarding more than online classes directly on the I-20 to facilitate clearance on this issue. The student can also get a letter from the DSO at the university.

- b. If so, what would be required?

See above.

**Passport Expiration Date:**

24. One of the problems that has consistently arisen over the years is when a nonimmigrant discovers after the fact that on their last admission, they were admitted to a shorter period of time due to the expiration date of their passport. We understand this policy.

- a. Is it CBP standard operating policy for an admissions officer to advise the foreign national that their admission is being limited due to the expiration date of the passport?

It's not a policy, but common practice is for there to be a conversation between the officer and traveler about the passport expiration date.

- b. If so, can this be revisited via muster, or other training?

It would be too time consuming to add this as a required additional step during primary inspection.

- c. Would CBP consider having a small piece of paper placed by the Admission Officer in such a person's passport that says something to the effect of:

"Your admission has been limited due to the expiration date of your passport. You must depart the United States or take action to change or extend your legal status in the United States of America prior to this date."

No. See above.