

Agenda Questions
Liaison Meeting of AILA with NY/NJ CBP
April 8, 2019

The American Immigration Lawyers Association is grateful for the continuing opportunity to liaise with our local CBP field office on matters of interest to our membership. Below we have collected a number of questions raised by our members, and we appreciate CBP's guidance and input.

Questions

1. Please provide an updated organizational chart and contact information for JFK, EWR and the Field Office.

See attached.

2. Have there been any recent staffing, policy, or procedural changes of significance?

CBP advised that travelers may experience increased wait times at airports during the busy summer travel season due to limited funding.

3. An H-4 or L-2 nonimmigrant typically presents a visa at the port of entry and is admitted for the duration of the visa or the Petition Expiration Date (PED). In circumstances in which the derivative is admissible beyond the expiration of the visa because the principal spouse (who is already in the United States) has been granted an extension of status by USCIS or has been admitted to the US for a longer period based on a new petition, what documents should the derivative applicant for admission prove to demonstrate that s/he is eligible for admission for the full period for which the spouse was admitted? Is a copy of the spouse's approval notice and I-94 sufficient? Should the applicant carry the marriage certificate? A member has reported that their client was told he must provide an approved I-539 in this case despite the fact that she was traveling with the principal who was carrying his original approval notice. Please advise.

The derivative beneficiary should present his/her valid visa as well as the new I-797 approval notice indicating that the principal spouse's status has been extended. This is sufficient evidence to be admitted based on the principal's extension. If they are told that they need to present an approved I-539, then they should ask to speak with a supervisor. In the event of an error when the derivative is admitted, then they can go to deferred inspection to address it.

4. If a foreign national with an expired E2 visa but a still valid I-94 that was issued to the validity of the individual's passport (short of 2 years from his/her last entry) travels to Canada for less than 30 days (and does not apply for a new E-2 visa), would CBP revalidate (as per 22 CFR 41.112(d)) the foreign national's I-94 for 2 years from the preceding entry upon presentation of a new passport? Does the answer change if the travel is to Mexico? What if the person has Global Entry or Nexus?

Upon coming back to the US from a contiguous territory, the foreign national should ask to speak with an officer to obtain a new I-94. S/he should **not go to the kiosk, but only to an officer.**

5. Please confirm that an individual with an extended H, L, P or O petition and a valid visa in his passport, which is valid for a shorter amount of time than the extension, is eligible to be admitted until the end date listed on the petition. Please also confirm that this is the case even when there is a new petitioner.

CBP confirmed. CBP should admit foreign national until the PED regardless of the Petitioner and so long as the visa is valid. If there is an issue then the foreign national should bring it to the attention of a supervisor and/or to deferred inspection.

6. Please confirm that a dual national may enter the U.S. with a visa in an expired passport from one country and a valid passport from his second country of citizenship.

They **cannot**. Per DOS policy a foreign national cannot enter the US with a valid visa in an expired passport from one country and a valid passport from another country. This is due to vetting and security concerns.

7. If an individual is a citizen of two countries for which ESTA is available, may he apply for ESTA in both passports and travel with either passport? Is there a preference that he use the same passport for all entries to the U.S.?

An individual should apply for ESTA with the passport that s/he intends to use for travel to the US. CBP looks at denied ESTA petitions, and they indicated that the system may automatically deny the ESTA in a second passport if approved with the first. That said, CBP indicated that so long as ESTA is approved with both passports, there should be no issues when traveling.

8. Are there specific types of documents which individuals with advance parole, other than applicants for adjustment of status, should carry to demonstrate their eligibility to be paroled into the U.S.?

If an individual has TPS and an I-512, CBP can check the status with the I-512. If TPS exists at the date that the individual is applying for parole then s/he will be paroled into the US.

9. If someone has a pending application for adjustment of status and has been granted advance parole, may he continue to travel pursuant to that grant of advance parole if the underlying basis for the adjustment of status application has been changed? (ex. The I-485 was initially filed based on an approved I-140, and the applicant is now the beneficiary of an I-130 and a request has been made to substitute it for the I-140.)

CBP indicated that this is a CIS issue. CBP will check the status of the I-485 at the time that an individual requests admission. They need to see that the I-485 is still pending in order to parole the individual. CBP wants to ensure that they are paroling an applicant so that s/he can continue to have AOS application processed and will confirm that such an application is in process with USCIS.

10. Is it correct that travel on a round-trip cruise departing directly from the U.S. to a foreign country is not considered a departure?
 - Is this just the case for cruises to the Caribbean or does the same rule apply to cruises to Europe?
 - May an applicant for adjustment of status disembark in the United States and resume the application for adjustment of status following a round-trip cruise to a country outside the U.S. without a grant of advance parole?

CBP indicated that this is not correct, and only applies to USCs and LPRs. Closed loop cruises as described above are cruises that depart from and arrive to the same port. For all individuals who are not USCs or LPRs, this still counts as a departure and upon return, even if to the same port, the individual must present a valid passport and visa (if applicable) or valid I-512 (if applicable).

11. If an I-751 was filed late or required to be refiled and the applicant received a valid receipt which states "valid for 18 months," does the person need to obtain a stamp to travel internationally or can they use the receipt? Does the answer change if the late filing was due to a previous I-751 denial?

This is an issue with CIS. When an individual presents at the border, CBP is looking at the documents that are presented to them such as an expired card and receipt notice indicating that their status has been extended. CBP looks to see that the documents presented by an individual are valid at the time s/he is seeking admission.

12. In the case of a foreign national who has re-filed an I-751 petition under the good cause exception (INA Section 216(d)(2)(B)) after a prior I-751 denial, how does CBP handle the inspection and admission process? What can such an individual do proactively to increase the likelihood of ultimate admission? Will an NTA be issued by CBP if USCIS has not yet issued one?

CBP answered Questions 11 and 12 together; see above.

13. What is the best way to request a complete copy of the paperwork (e.g. I-275 or other form of removal order/withdrawal of application for admission; incomplete I-877 or other transcript of Q and A) in instances of VWP refusal when the foreign national has not been provided with these copies? Is it general policy to provide copies of these documents to the individuals at the port of entry?

The general policy is to provide individuals with copies of the paperwork and CBP was unaware of cases where they do not. Generally, the foreign national receives an envelope with the documents including the I-275 and sworn statement. If the foreign national indicates that s/he doesn't have it, then it can be requested through FOIA.

14. Under what circumstances are drug tests administered by CBP at the border? How can members get the results of these tests?

Drug tests are not being administered by CBP. If attorneys have received such reports, then this would be an issue for HQ.

15. Are there circumstances under which individuals on domestic flights may be requested for documents proving their status?

Typically, CBP is not involved with domestic flights. That said, there are few instances where CBP would be involved; for instance, if Port Authority requests their assistance. CBP will assist other agencies as needed, which may result in them boarding domestic flights on a case by case basis.

16. Please advise what procedures are in place to ensure that officers do not access information from the cloud using the cell phones of applicants for admission? What are the consequences if an applicant refuses to provide his or her cell phone password? Is this different for U.S. citizens?

The SOP for examining electronic devices is that the devices are required to be put in airplane mode so that CBP cannot access cloud data. CBP needs to confirm that devices are in airplane mode when searching. CBP can detain a device if an individual refuses to allow the search; this is done on a case by case basis. CBP reports that devices are detained are generally for reasons

associated with terrorism, narcotics, and/or child pornography. When there are questions about detaining devices/searches, including questions about attorney/client privilege, CBP will reach out to legal counsel. CBP noted that this policy includes all travelers, even USCs.

17. There are instances when a previously deported person wins a motion to reopen and ICE must make arrangements to return them. Additionally, there are times where people have been deported in error and ICE is required to return them. What role does CBP play in arranging for re-entry of those persons? What if the person reappears at the US border on their own, without ICE's assistance, with a judicial order indicating that the person is to be returned? Can CBP admit that individual? Or does ICE have to be involved in the process?

ICE has to be involved with an individual's return because they have the A File and the relevant documents. Similarly, CBP will need to coordinate with ICE because of any detention and/or bond issues associated with the case. In these instances, ICE will parole the individual into the US.

18. We understand that the relief available to a USC or foreign national who is sent to secondary inspection on a regular basis is the filing of a TRIP request. However, is there a procedure available to a USC who has no criminal issues or previous immigration violations, who has filed a TRIP request and has been issued a redress number yet continues to be subjected to secondary inspection?

If after a TRIP request an individual continues to have problems, this should be raised with CBP directly.

New York Field Office Organizational Chart

