



**U.S. Customs and
Border Protection**

MEMORANDUM FOR: Directors, Field Operations
Director, Preclearance Operations
Office of Field Operations

FROM: Acting Executive Director
Admissibility and Passenger Programs

SUBJECT: Processing Expedited Removal Cases

(b) (6), (b) (7)(C)

U.S. Customs and Border Protection (CBP) is continually scrutinized for its processing of inadmissible aliens under Section 235(b)(1) of the Immigration and Nationality Act (INA), commonly referred to as Expedited Removal (ER). As stated on March 31, 1997 by the Deputy Commissioner of the Immigration and Naturalization Service in implementing ER:

The expedited removal provisions present a tremendous challenge and responsibility...Every officer must adhere strictly to required procedures to ensure that the rights of aliens are protected, particularly those who express a fear of persecution, at the same time ensuring that aliens who clearly seek to violate the immigration laws are quickly removed from the United States in a professional, fair, and objective manner....”

This memorandum and muster is to serve as a reminder to CBP officers, supervisors, and managers processing, reviewing, and approving ER cases. This reminder includes the following items:

1. Use of the correct forms and charges for ER.
2. Asking the four “fear” questions on the I-867B.
3. Referring aliens who express a fear of return, whether verbally in response to a question or by non-verbal cues, for a Credible Fear interview.
4. Use of interpreters in any cases where the alien cannot communicate in the English Language.

The incorrect and incomplete processing of ER cases reflects upon the professionalism of CBP officers, supervisors and managers; and creates a perception to the public of the lack of sensitivity of CBP officers.

Please ensure that this memorandum and muster are disseminated to all ports of entry within your jurisdiction. Should you have any questions or require additional information, please contact (b) (6), (b) (7)(C) Director, Enforcement Programs Division (EPD) at (b) (6), (b) (7)(C)

Attachment

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Week of: Immediate
Topic: Processing Expedited Removal Cases
References: Section 235(b)(1) of the INA; 8 CFR 235.3(b)
Headquarters POC: (b) (6), (b) (7)(C)
Office: Admissibility and Passenger Programs

Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), amended Section 235(b) of the Immigration and Nationality Act (INA) to authorize the Attorney General (now the Secretary of the Department of Homeland Security (DHS)) to remove, without a hearing before an immigration judge, aliens arriving in the United States who are inadmissible under Section 212(a)(6)(C) or 212(a)(7) of the INA.

Under this expedited removal provision, aliens who indicate an intention to apply for asylum or who assert a fear of persecution or torture are referred to an asylum officer for a credible fear interview.

When processing cases under Section 235(b) of the INA, it is mandatory to process the case using the required forms and to document the case correctly. The correct forms specific to ER cases include:

1. I-867A – Sworn Statement
2. I-867B – Jurat for the Sworn Statement
3. I-860 – Order of Expedited Removal
4. I-296 – Removal Order and Verification of Departure
5. M-444 – Information Regarding a Credible Fear Interview (if the alien expresses a fear of return)

Fear of persecution or torture – if the alien indicates in any manner or at any time during the inspection process, that he or she has a fear of persecution, that he or she has a fear of return to where they came, or that he or she has suffered or may suffer torture; you are **required** to refer the alien to an asylum officer for a credible fear determination.

- The four questions on the Form I-867B are designed to help in determining whether the alien has such fear.
- The sworn statement (both I-867A and I-867B (Jurat)) must be taken in a language the alien understands.
 - If the alien does not understand a language the officer is speaking, an interpreter must be obtained.
- Ask the questions as they appear on the Form I-867B at the end of the sworn statement, even if the officer asked the questions or similar questions earlier in the sworn statement.
 - Some aliens will respond to the question “Why did you leave your home country or country of last residence?” by saying either that they were (b) (7)(E)

▪ (b) (7)(E)
(b) (7)(E)

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- However, if the alien also answers “yes” to either of the subsequent protection-related questions, even if no additional information is offered, the alien must be referred to an asylum officer for a credible fear interview.

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(b) (7)(E)

- Any comments of concern made by the alien must be recorded in the sworn statement, including any indications made by the alien **prior to the secondary interview.**

(b) (7)(E)

- When an individual or group expresses fear, it is against CBP and DHS policy to:
 - Improperly encourage the alien(s) to withdraw their application for admission

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- Fail to refer such the alien(s) for an interview by an Asylum Officer for a credible fear determination
- Incorrectly remove or send back (deny admission/referral) the alien(s) to a country where he/she/they may be persecuted and/or back to the country in which they came from, i.e., Mexico.
- Detain the alien(s) improperly or in inappropriate conditions
- CBP officers, supervisors, and managers should not provide an estimate of the time that the alien will be in detention prior to the credible fear interview.
 - Under 8 CFR 235.3(b)(4)(ii), aliens referred for credible fear interviews are subject to mandatory detention unless:
 - [REDACTED] (b) (7)(E)
 - [REDACTED]
 - CBP must refer to ICE/ERO to detain all aliens referred for credible fear interviews.

If the alien answers affirmatively to one of the protection-related questions or requests asylum, and later changes the answer or asks to be sent home, the officer/supervisor must consult with the local USCIS Asylum office that has jurisdiction over the port of entry, to obtain guidance and fully document the results in the I-213. If the CBPO/Supervisor is unable to consult with a Supervisory Asylum Officer, they must refer the case.

Aliens who indicate an intention to apply for asylum or a fear of persecution or torture may not be ordered removed until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

It is CBP's responsibility to protect an alien(s)'s identity and not reveal or announce to any other foreign national or foreign government official that the alien(s) have sought refuge in the United States by requesting asylum or asserting a claim of fear of persecution or torture in returning to their country of origin.

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