

April 6, 2006

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE

FROM: Executive Director
Admissibility Requirements and Migration Control

SUBJECT: Fraud and Misrepresentation Threshold Guidance

The purpose of this memorandum is to provide guidance to the field on what properly constitutes a sustainable charge of fraud or misrepresentation within the statute of 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA).

Section 212(a)(6)(C)(i) is defined as follows:

In general - Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Law Enforcement Records as a Basis for Enforcement Action

(b) (7)(E)

(b) (7)(E)

Although the burden of proof is on the applicant for admission to establish admissibility, it is incumbent on the examining CBP Officer to (b) (7)(E)

(b) (7)(E)

Fraud in Preparation of Immigration Documents

In many locations, subjects referred for secondary inspection to determine admissibility or to process for immigration benefits are asked to complete an immigration questionnaire. Those travelers applying for admission under the Visa Waiver Program (VWP) are asked to answer a series of questions on the reverse of the Form I-94W and to affirm their answers. Others submit self-prepared or independently obtained documentation in support of their application for certain nonimmigrant classifications, e.g., Trade NAFTA. In all cases, CBP Officers must exercise diligence when establishing fraud or misrepresentation.

One common scenario that frequently results in consideration of refusal based on fraud or misrepresentation involves (b) (7)(E)

(b) (7)(E)

As an example, question "B" on Form I-94W states:

Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?

In most instances, the VWP applicant completes Form I-94W with little or no guidance. A correct answer to any of the questions is contingent on a complete understanding of the terms therein. CBP Officers may be familiar with the term "crime involving moral turpitude", however, it may not be fully understood by the traveling public. (b) (7)(E)

(b) (7)(E)

Statements Made on Primary Inspection

(b) (7)(E)

Creating Lookout Records for Fraud and Misrepresentation

(b) (7)(E)

Alternative Grounds of Inadmissibility

In cases of fraud or misrepresentation, which cannot be substantiated, CBP may consider inadmissibility under other provisions of the INA, such as an immigrant without an immigrant visa (Section 212(a)(7)(A)(i)). The "remarks" section of the secondary inspection record may be used to explain that there was (b) (7)(E)

(b) (7)(E)

Discretion

Every adverse action requires completion of the discretionary checklist and supervisory review prior to the final determination of the disposition. In addition, every case of fraud/misrepresentation (b) (7)(E)

(b) (7)(E)

Supervisory and Managerial Review

Directors of Field Operations, Port Directors, and other managers should ensure proper application of 212(a)(6)(C)(i) of the INA as part of their periodic reviews of all enforcement cases.

Questions or concerns with this guidance may be directed to (b) (6), (b) (7)(C) Executive Director, Admissibility Requirements and Migration Control, at

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

/s/

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