



U.S. Customs and
Border Protection

JUL 1 2009

MEMORANDUM FOR: Directors, Field Operations
Director, Pre Clearance Operations
Executive Directors, Field Operations Academy
(b) (6), (b) (7)(C)

FROM: Acting Executive Director
Admissibility and Passenger Programs

SUBJECT: Refusing Entry to Visa Waiver Program Applicants

(b) (7)(E)

This guidance is pursuant to an interpretation by the Board of Immigration Appeals of Title 8 Code of Federal Regulations (CFR) section 217, and may be found in the Inspector's Field Manual section 15.7(g) and 8 U.S. Code section 217.

This application of Title 8 CFR 217 includes 1) aliens who present fraudulent or counterfeit travel documents claiming to be nationals of VWP countries but who are not actually nationals of VWP countries; 2) aliens who apply for admission under the VWP and were previously refused under the VWP; and 3) aliens that apply for admission under the VWP and have not yet been provided with, or completed, a Form I-94W during the inspection process. Although Title 8 CFR section 217.2(b)(1) currently requires all VWP travelers to present a completed, signed Form I-94W, 8 CFR section 217.4 provides that all aliens who are applying for admission under

(b) (7)(E)

This policy is consistent with the immigration regulations, specifically 8 CFR sections 217.4(a)(1) and 235.3(b)(10). *See also Liu v. Gonzales*, 181 Fed. Appx. 52, 54 (2d Cir. 2006). (“[T]he provisions of 8 CFR section 217.4 are not limited to aliens who are actually nationals of VWP designated countries, but specifically encompass individuals who present fraudulent and counterfeit travel documents from such countries.”) (quoting *In re Kanagasundram*, 22 I & N Dec. 963, 964 (BIA 1999)).

If you have any questions, please have a member of your staff contact (b) (6), (b) (7)(C), Program Manager, Admissibility and Passenger Programs, of my staff at (b) (6), (b) (7)(C).