

A Review of the Norfolk Ship Jumping Incident

December 2002
Office of the Inspector General

EXHIBIT B



INS
c-PMs

U.S. Department of Justice
Immigration and Naturalization Service

Policy Transmittal (b) (7)(E)

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Office of Executive Associate Commissioner 425 I Street NW
Washington, DC 20536

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MEMORANDUM REGIONAL DIRECTORS
FOR DIRECTOR, INTERNATIONAL AFFAIRS

FROM: (b) (6), (b) (7)(C) [signed]
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Nonimmigrant Unforeseen Emergency Waivers Under Section
212(d)(4)(A) of the Immigrant and Nationality Act - IFM Update
IN02-29

This memorandum provides amendatory language to the Inspector's Field Manual (IFM) and reminds immigration officers of the strict limitations placed upon unforeseen emergency waiver requests under section 212(d)(4)(A) of the Immigration and Nationality Act (Act). This memorandum supersedes the November 14, 2001, memorandum Deferred Inspection, Parole and Waivers of Documentary Requirements to the extent that it conflicts with the granting of 212(d)(4)(A) waivers. Effective immediately, this policy authorizes port directors and officers-in-charge (including an individual acting in either capacity) to adjudicate section 212(d)(4)(A) waivers under limited circumstances. These changes will be included in the next release of INSERTS. If you require any clarification regarding this memorandum, please contact Assistant Chief Inspector (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)

1. Section (d) of Chapter 17.5 of the IFM is revised to read in total as follows:

"(d) Nonimmigrants.

(1) Section 212(d)(3)(A). Nonimmigrants who are inadmissible to the United States, and who require a visa, must apply in advance for a waiver under section 212(d)(3)(A) of the Act. Joint concurrence by the Secretary of State and the Attorney General is required for approval. The alien usually applies for the waiver in conjunction with the application for a nonimmigrant visa. Once approved, the section of law under which the waiver was approved and any special limitations will be noted on the visa. If otherwise admissible, enter the waiver information and any restrictions on the reverse side of the I-94 in the appropriate blocks.

(2) Section 212(d)(3)(B). Inadmissible nonimmigrants who are already in possession of a nonimmigrant visa, or who are exempt the requirement for a visa, must apply for a waiver under section 212(d)(3)(B) to the district director having jurisdiction over the intended port-of- entry. Application is made on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. Adjudication procedures are discussed in detail in the Adjudicator's Field Manual Chapter 52. If approved, the alien will be in possession of Form I-194, Notice of Approval of Advance Permission to Enter as a Nonimmigrant, or the approval may be noted on the alien's border crossing card. If otherwise admissible, enter the waiver information, the file number, and the FCO code on the reverse side of the Form I-94, along with any conditions or restrictions.

(3) Section 212(d)(4)(A) Waiver of Passport and/or Visa. (i) A district director has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an unforeseen emergency prevented him or her from acquiring the appropriate passport or visa. See generally Matter of LeFloch, 13 I. & N. Dec. 251, 255-56 (BIA 1969) (212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); Matter of V, 8I & N. Dec. 485.485- 87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). The term "unforeseen emergency" as used in 8 CFR 212.1(g) means:

an alien arriving for a medical emergency;

- an emergency or rescue worker arriving in response to a community disaster or catastrophe in the United States;
- an alien accompanying or following to join a person arriving for a medical emergency;
- an alien arriving to visit a spouse, child, parent, or sibling who within the past 5 days has unexpectedly become critically ill or who within the past 5 days has died; or an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

(ii) In a case where a section 212(d)(4)(A) waiver is under consideration (only in those cases identified above), the alien should complete Form I-193 and remit the appropriate fee. In the remarks block of the Form I-193, the immigration officer shall describe the unforeseen emergency that prevented the alien from obtaining the proper documentation. The authorizing official shall precisely describe the emergency that prevented the alien from acquiring the required documents before arriving in the United States. In addition, the authorizing official shall describe precisely why a

reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Mark "o/a" in the block designated for Department of State concurrence on the Form 1-193. Where a port director or an officer-in-charge favorably adjudicates an application for a section 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission