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## **Chapter 1: Organization and Content of the U.S. Customs and Border Protection (CBP) Inspector's Field Manual (IFM) (Revised 2/10/06; CBP 17-06)**

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Welcome to the Customs and Border Protection Inspector's Field Manual (IFM). This manual is a comprehensive "how to" manual detailing official CBP policies and procedures for CBP's immigration mission. The IFM should be used in concert with several other references: the Immigration and Nationality Act ("INA" or "Act"), Title 8 of the Code of Federal Regulations (8 CFR), and official CBP directives, among others. The IFM is not intended to duplicate or replace any of them. Although initiated under the former Immigration and Naturalization Service, this manual is gradually being updated to address CBP's policies and practices.

The IFM, as well as the other volumes concerning immigration information, are included in the "I-LINK" (formerly INSERTS) CD-ROM reference library program as well as on the CBP intranet. I-LINK's volumes are electronically connected so that you can conveniently flip from one to the other (referred to as "hypertext" links) without having to close one volume and open the next. A search function allowing for the search of a particular topic is included in I-LINK.

The IFM is intended to be "user friendly." Please send your suggestions for improvements and ideas for new items you think should be included in the IFM through your chain of command to CBP HQ, Admissibility Requirements and Migration Control (ARMC).

### **IMPORTANT NOTICE:**

Nothing in this manual shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

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## Chapter 2: Mission and Conduct of Inspections Officers

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### 2.1 Mission Statement.

We are the guardians of our nation's borders. We are America's frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our nation's economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.

#### CBP Core Values

*Vigilance:* Vigilance is how we ensure the safety of all Americans. We are continuously watchful and alert to deter, detect and prevent to our nation. We demonstrate courage and valor in the protection of our nation.

*Service to Country:* Service to country is embodied in the work we do. We are dedicated to defending and upholding the Constitution of the United States. The American people have entrusted us to protect the homeland and defend liberty.

*Integrity:* Integrity is our cornerstone. We are guided by the highest ethical and moral principles. Our actions bring honor to ourselves and our agency.

### 2.2 Authority. (Revised 2/10/06; CBP 17-06)

The United States, as a matter of sovereign right, exercises control over aliens seeking to enter, pass through, or remain in the national territory. The purpose of the controls is to protect the national interest and the continuing good order and well-being of the nation. Immigration inspection procedures are designed to simplify the examination and admission of United States citizens who can readily establish their identity, and to determine whether each alien meets the admission requirements of the Immigration and Nationality Act (INA).

The authority of CBP officers to conduct immigration inspection of arriving persons is contained in section 235 of the INA. Other authorities are contained in section 287 of the INA. The principal authorities relating to inspection of persons are:

- to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which it is believed aliens are being brought into the United States;
- to order detention and delivery of arriving aliens;
- to question, under oath any person seeking to enter the U.S. in order to determine admissibility;
- to take and consider evidence of or from any person touching the privilege of any alien to enter, reenter, transit through, or reside in, the United States;

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- to search, without warrant, the person and belongings of any applicant seeking admission, concerning whom the officer may have reasonable cause to suspect that grounds exist for denial of admission.

### 2.3 Reserved.

### 2.4 The CBP Officer and the Public. (Revised 2/10/06; CBP 17-06)

At a port-of-entry, you are customarily the first representative of our government the public meets. First impressions last, so it is important that you maintain a highly professional appearance and standard of conduct at all times, regardless of circumstances. It is your responsibility as an officer to carry out the duties and responsibilities of your position in accordance with law, regulation, and CBP policy. Remember, that you are both a law enforcement officer and service provider. You must constantly be aware of your "customers," the American public whose laws you have sworn to uphold and enforce and the traveling public who expect and deserve prompt, efficient, courteous, inspectional services.

It is important that the applicant for admission be left with the impression that you were honest, fair, courteous, and considerate. Bias or prejudice is not acceptable. Since officers may talk to hundreds of persons daily, a conscious effort must be made to remain patient. Your decisions concerning the people you inspect could seriously affect their lives.

### 2.5 Uniforms, Badges, and Identification.

(a) The CBP Officer Uniform. All officers are required to be properly attired in the appropriate uniform at all times when on duty. **Appendix 2-3** describes when and how the uniform is to be worn.

### 2.6 The Work Environment.

Our work environment at times can be difficult and challenging. CBP has many programs in place that help insure a safe and healthy work environment and to guarantee that you, as an employee, are treated equitably and professionally and given the tools necessary to succeed. Following is a brief description of many of the current programs designed to support you in your job. Each, in its own way, contributes to the success of our overall mission. (Introductory text revised 2/10/06; CBP 17-06)

(a) CBP Safety Program. The component elements of the CBP Occupational Safety and Health Program are set forth in the Occupational Safety and Health Handbook, **CIS HB 5200-08A** dated May 2003. It establishes CBP policies and procedures to assure a safe work environment, safe work practices, and conformance with statutory and regulatory requirements for Federal agency safety and occupational health programs. The CBP Occupational Safety and Health Program consists of the following core elements:

#### 1. Safety Program Management

- The Designated Safety and Health Official (DSHO) for CBP is the Assistant Commissioner, Human Resources Management (HRM). The Assistant Commissioner, HRM oversees administration of the CBP Safety Program on behalf of the Commissioner.
- Director, HRM Employee Support, Safety and Health (SAFE) Division administers the CBP National Safety Program. The Headquarters safety staff is the Safety and Occupational Health Branch, located in Indianapolis, Indiana.
- Chief, HRM Safety and Occupational Health Branch is responsible for develop service-wide safety policy, establishes national program goals and objectives and the day-to-day management of the CBP Safety Program.
- HRM Area Safety and Occupational Health Managers (ASOHMs) serves as a technical and policy advisor to management and will serve all CBP organizations located within their assigned geographic areas to Office of Field Operations (OFO) Field Offices and Border Patrol Sectors.
- Collateral Duty Safety Officers (CDSO) are required in every CBP facility. Where deemed appropriate, CDSO's may service multiple facilities. CDSO's shall ensure that all program elements established by CBP policy and 29 CFR 1960 are implemented within their area of responsibility. Managers should recruit volunteers who have an interest in the safety program to serve as CDSOs.
- Headquarters Office Directors and Principal Field Office Managers are responsible for providing a safe and healthy work environment and for actively promoting the Safety and Occupational Health Program. Principal Field Office Managers include Directors, Field Operations, Port Directors, Chief Patrol Agents, Laboratory Directors, Strategic Trade Center Directors, and Training Center Directors.
- CBP Supervisors are the cornerstone of the CBP Safety Program and have specific responsibilities defined in the Occupational Safety and Health Handbook, CIS HB 5200-08A dated May 2003.

#### 2. Primary CBP Safety Program Elements

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- Reporting, Investigation, Recording and Analyzing Incidents
- Reporting and Abating Hazards
- Safety and Health Committees
- Safety Training
- Hazard Analysis
- Personal Protective Equipment (PPE)
- Written Programs
- Program Evaluations
- Educational/Promotional and Motivational Programs
- Field Federal Safety and Health Councils

Any CBP employee wishing to report an unsafe condition (CBP Form 507), to inquire about any safety and occupational health issue, or to obtain updated information on the provisions of the Occupational Safety and Health Handbook, CIS HB 5200-08A dated May 2003 should first contact the Collateral Duty Safety Officer (CDSO) for their location. You may also contact the HRM Area Safety and Occupational Health Manager or the HRM Safety and Occupational Health Branch at (317) 614-4840 or (Detailed Contact Information).

(Paragraph (a) revised 2/10/06; CBP 17-06)

(b) Employee Assistance Program.

(1) General. The INS Employee Assistance Program (EAP) is designed to provide training and confidential short-term counseling, information, and referral and assistance in the areas listed below. For more information refer to AM 1.3.203 or call [REDACTED] LCSW/ACSW, INS EAP Administrator at (202) 514-5763 or FAX (202) 514-5928 or pager (800) 796-7363 PIN # 101-4729.

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Assistance areas:

- Emotional/Stress
- Family/children/education
- Relationships/Marital
- Drug/Alcohol
- Trauma (shootings, etc.)
- Financial/Legal Referrals
- Day Care/Elder Care
- Special Education
- Work Performance Problems
- Interpersonal/work site issues

(2) Purpose. The purpose of the EAP is:

- to provide services for treating the mental health, alcohol, and other drug related problems of the workforce. Participation is *a/ways* voluntary;
- to assist employees with work performance problems and to provide support and guidance throughout the problem-solving period in a positive non adversarial manner; and
- to serve as a resource for management in providing guidance in working with employees whose personal problems have affected their job performance.

(3) Trauma Debriefings. Trauma debriefings are mandatory for any employee involved in an operational incident such as a shooting, accident, drowning, etc. Debriefings are conducted to minimize psychological injury to the employee. Debriefings are conducted by a licensed Police Psychologist or Social Worker. Supervisors of the affected employee must request the debriefings ASAP by calling 800-467-3277 or the PAGE number noted below.

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(4) Confidentiality. This program is authorized by laws which protect the privacy of the individual and confidentiality of records in accordance with the provisions of Pub. L. 93-282. An employees job security will not be affected by requests for counseling or referral assistance. Information shared between the employee and the EAP counselor is considered confidential.

(5) Service Limits. Employees and their family members are entitled to meet with an EAP counselor, funding permitting. Administrative leave may be authorized to see an EAP counselor. There is no charge for EAP services. Information & Referral Services are provided on a broad range of interests for employee and family members. The EAP will do your "research" in finding necessary resources your family might need.

(c) Equal Employment Opportunity Program. See *Equal Employment Opportunity Handbook*.

(d) Incentive Awards Program. The Service actively encourages all employees to be innovative and to continually perform to the best of their abilities. Individual employee incentive awards available for innovative ideas and exceptional performance are discussed in **AM 1.3.202**.

(e) Employee Union Activities. Two unions represent different segments of INS bargaining unit employees. The National INS Council of the American Federation of Government Employees (AFGE) represents INS district employees. The National Border Patrol Council represents Border Patrol employees. The National INS Council, of which Inspectors are members, is comprised of various AFGE Locals organized throughout the INS districts. Officials of the Locals and the Council are elected by bargaining unit members.

A negotiated Agreement (often called the union Contract) regulates some of the interactions that take place between INS employees and management, and between union representatives and management. For example, an article of the Agreement (3B) states that discussions between a supervisor and an employee concerning counseling, evaluations, workload, or disciplinary action should be conducted to insure the employee's privacy. The Agreement is national in scope. Various AFGE Locals have negotiated supplemental agreements that pertain to the Local's area only. These agreements may cover a range of topics; often they state how Inspections overtime will be scheduled. [See *Agreement between INS and National Immigration and Naturalization Service Council, M-203* and *Agreement Between INS and National Border Patrol Council, M-422*.]

Sometimes port, district, or other managers overlook an obligation to contact an appropriate union representative before changing a policy or practice, or initiating a new procedure that changes working conditions for bargaining unit employees. Part of a manager's planning for these changes should include notification to appropriate union representatives. (See Article 9) If in doubt whether or not to contact a union representative over a specific matter, a manager may seek advice from the district administrative office, or the regional or Headquarters Office of Labor-Management Relations.

In keeping with the INS partnership with the National INS Council, an even better procedure to notifying the union of changes is for managers to invite appropriate union officials to participate in planning such changes. Union representatives can provide a complimentary perspective, valuable front-line experience, and ideas for carrying out procedures or solving attendant problems. For union participants, on the other hand, helping with such planning sessions gives better insight into constraints managers must work within, valuable experience in planning and implementing projects, and an opportunity to share ideas and contribute to improving the Inspections Program. Using a duly-designated union representative to help plan changes often relieves managers of the need to notify the union later of changes and bargain over their impact. When union input is incorporated into the planning process, the plan often meets the needs of both the employees and managers better. The Inspections Program strongly endorses the concept of the Partnership. Union representatives currently participate on many national and port committees and task forces.

(f) Training.

(1) General. All immigration officers will receive the necessary training to successfully perform the duties of their position. This is both a promise and a challenge. The job of the immigration inspector has undergone many changes in recent years, a result of technological improvements, legislation, and an effort by the Service to create a more professional officer corps.[see AM 1.2]

(2) Preacademy Training. When Inspectors first come on duty there may be some delay in going to the Academy. During this time, new officers should begin a locally-prepared preacademy training course. The first step in this program should be the preparation of a training file, to be maintained by the local training officer or supervisor. This file should contain the training agreement, signed certification of having read and discussed "The Officer's Handbook" (Form M-68), a list of instructional materials provided to and mastered by the trainee, evaluations (Form G-445), and other materials that will later be useful in determining the trainee's readiness for promotion. The training itself should include a combination of academic instruction and on-the-job training (OJT) assignments. Providing such instruction usually involves the cooperation of training officer and journeyman inspectors. Each step in the academic training and the OJT should be recorded. Special attention in the preacademy training should be given to those areas that are not covered thoroughly in the Academy and areas involving local policy covering situations commonly encountered at the trainee's duty station.

(3) Academy Training. New permanent full time inspectors generally enter the Service at the GS-5 level and go through a two year training period to reach the journeymen level of GS-9. Some inspectors enter through special programs at the GS-7 level. In both cases, the Inspector goes through a one year period of probation. During this time he or she is required to attend The Immigration Officers Basic Training Course (IOBTC) at the Immigration Officer Academy (IOA) in Glynco, Georgia and to complete a twenty-week Post Academy Course. A trainee will be detailed to the IOA within thirty days of entry on duty when administratively and operationally feasible.

The course at IOA consists of ten weeks of Immigration and law enforcement courses. Each attendee is also tested in Spanish. Those that are found to be adequate in the Spanish language return to their duty station on graduation from the basic course. Those who need more instruction are kept for a four week total immersion course in Spanish.

Other than permanent full time (OTP) inspectors are also hired at the GS-5 level with promotion potential to GS-7. They are required to attend and satisfactorily complete a special OTP basic training program. Phase I of this course is a four week course given at IOA. Phase II is completed at the Inspector's duty station. Phase II must be completed within 90 days of the completion of phase I. If the individual cannot pass the course, he or she will be given another opportunity to take and pass the course. If an individual cannot pass the course on the second attempt, district management will review the individual's case and consult with Regional Personnel.

Successful completion of the IOBTC is a requirement for any OTP immigration inspector who is converted to a full-time, permanent Officer Corps position.

(4) Post Academy Training. IOBTC and OTP basic are both followed by formal post academy training courses. Both courses are obtained from and administered by the Immigration Officer Academy. These courses cover most of the material needed by the immigration inspector. However, inspectors work in a complex, constantly changing work environment. There is a need for continuing informal post academy training that provides for the updating of knowledge and skills. Some of the needed information will come from supervisory briefings, some from formal classes given by training officers, special operations officers, intelligence officers, or senior inspectors, and some training material is provided by the Service in the form of video tapes.

One form of self-help instruction comes in the form of locally prepared "how to" manuals. They have copies of completed forms, sample A files, form letters or memoranda, instructions on the use of computer systems, sample copies of exclusion or prosecution cases, etc. These books provide easy references for

work in progress and study materials for both trainees and journeymen.

(5) Computer Training. Computers have played a part in the inspection process for quite some time. Each year more of our processes become automated. The inspector needs certain computer skills to do his or her job. On primary there is need to query vehicles and individuals. In secondary he or she must be able to run on-line queries on CIS, NIIS, STSC, NAILS, IBIS, NLETS/NCIC, and OASIS. Inspectors must be able to change their passwords in PICS and IBIS. Reports and memoranda are prepared on off-line systems such as Word Perfect, or on Service-developed systems such as the Performance Analysis System (PAS). Many offices have established a local area networks (LAN) that contain the software for word processing, spreadsheets, and databases. The Academy has provided for some orientation in the on-line systems but "hands-on" training in these systems as well as most off-line training is done locally. [See AM 1.2.301]

(g) Special Emphasis Programs (SEPs). Special Emphasis Programs are mechanisms used to assist in the implementation of the affirmative employment aspect of the EEO Program. Each Program is assigned a national and local (i.e. regional, district, sector, etc.) Special Emphasis Program Manager (SEPM) who emphasizes and initiates positive actions to attain appropriate representation of minorities, women and persons with disabilities within each organizational component, occupational category and grade level commensurate with the national and local civilian labor force. The national program managers, under the supervision of the Chief of Affirmative Employment and Director of EEO, develop and evaluate service-wide policies and procedures for the SEPs and provide program leadership, advice and guidance. Currently there are approximately 275 local office SEPMs serving on a collateral duty basis. SEPMs at the local level are selected through the application process. The positions are announced as any other vacancies and up to 20% of the employee's time may be devoted to performing duties. The Special Emphasis Programs are as follows:

- Asian/Pacific American
- Black Affairs
- Federal Women
- Hispanic Employment
- Native American
- Selective Placement (includes persons with disabilities and disabled veterans)

(Added IN00-18)

## 2.7 Reporting Significant Incidents.

With the recent merger, CBP has become the focal point for a much higher level of public interest than in the past. The Office of Field Operations program, since it is so highly visible, is an obvious target of those seeking publicity. You should anticipate national media attention and prepare yourself to act promptly and properly in emergency situations. For instance, strikes and demonstrations on either northern or southern borders are not uncommon, threats of terrorist activities are frequent at international airports, bomb threats at land ports are common, assaults upon officers, and natural disasters can occur anywhere. As a CBP Officer, you may be confronted with such situations. Local ports should insure all officers have access to and are familiar with guidelines for reporting and handling such situations through the chain of command.

Further guidance regarding significant incident reporting can be obtained in CBP Directive No. 3340-025B, issued by the Commissioner, dated May 16, 2003.

## 2.8 Hostage Situations.

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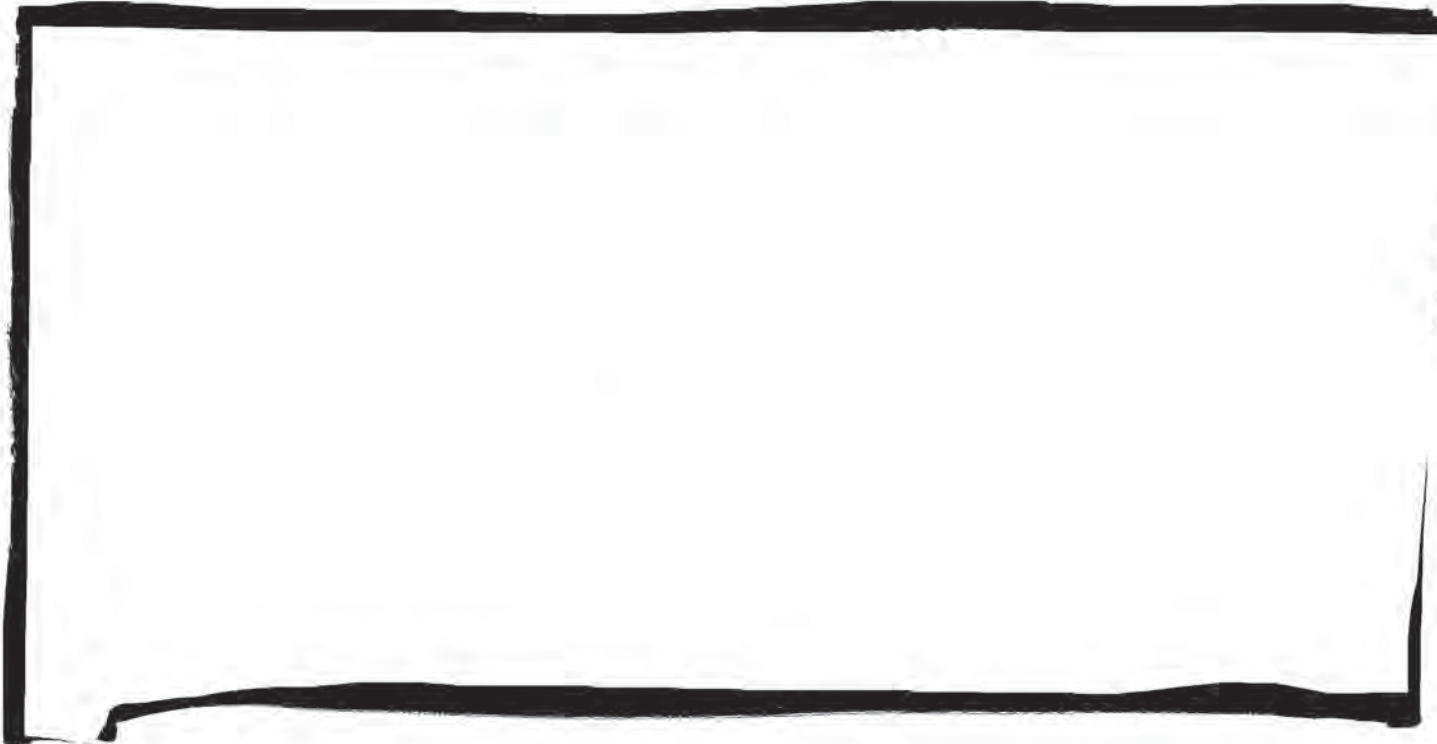
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## 2.9 Dealing with Attorneys and Other Representatives.

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the *Adjudicator's Field Manual*, Chapter 12, and 8 CFR 292.5(b).

## 2.10 Land Border Integrity Program (Added 6/23/99; IN99-22)

Office of Inspections has set forth policy and guidance in establishing uniform national practices for integrity standards at all land POEs. Field managers are responsible for implementing the standards and guidelines outlined below. These guidelines are not intended to prevent tests of new and special processing techniques, nor are these guidelines intended to impose unrealistic operating requirements on POEs.

Each port must choose one or more of the options outlined below regarding vehicle and pedestrian lane scheduling options and implement at a minimum once per shift. Primary lane changes on INS staff with Customs staff are desirable. Schedules and frequencies should be negotiated with Customs counterparts locally.

### Vehicle and Pedestrian Lane Scheduling Options:

- (1) Agency pushes - Supervisory Immigration Inspector will randomly instruct officers to lane shift
- (2) Compex/INTEX hits - Any time there is a hit, there is an automatic lane assignment shift
- (3) Traffic manager will initiate random lane flip-flops - Primary lane changes of INS and Customs Staff
- (4) Computer Generated random lane assignments and shift.

To further enhance the integrity of the inspectional process, an automatic lane push or flip-flop will occur when the inspecting officer encounters a relative. The term relative includes, but is not limited to: immediate family, and extended family such as in-laws, cousins,

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uncles, aunts, nephews, nieces, and significant others. This is not intended to impose unrealistic operating requirements on small POEs with minimum staffing levels. For example, if there is only one officer on duty, or it is realistically not possible to avoid inspecting a relative, the inspection should be done in a professional and thorough manner. In addition, ports are reminded to reinforce the policy of 100% inspection of all law enforcement personnel. Although INS respects and values its working relationship with other local and Federal law-enforcement agencies, officers of these agencies are not exempt of the inspection process and are, in fact, held to a higher standard.

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Immigration Enforcement

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INSERTS PLUS/Inspectors Field Manual/Chapter 3: The Organization of Inspections

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## Chapter 3: The Organization of Inspections

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(Chapter removed and reserved 2/10/06; CBP 17-06)

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INSERTS PLUS/Inspectors Field Manual/Chapter 4: Conducting Research. (Revised 2/10/06; CBP 17-06)

## Chapter 4: Conducting Research. (Revised 2/10/06; CBP 17-06)

- 4.1 General Considerations
- 4.2 Sources and Organization of Immigration Law
- 4.3 Basic Research Methods
- 4.4 Factual Research and Databases

### 4.1 General Considerations.

As a CBP officer, you will often encounter novel issues or factual situations. In the course of your duties, you will also be exposed to other areas of immigration law that may have a bearing on the action you take. The correct resolution of these issues, or whether they are relevant at all, will not always be apparent. Even when an outcome is clearly apparent, you should always provide a basis for an action grounded in legal authority. There will thus be occasions when you will need to perform research before you make a decision. This chapter will seek to familiarize you with some of the basic methods of legal research and with the general organization of the immigration law.

It is important to remember that you must take an active role as an officer. Not every situation will be the same, and not every situation will suggest an easy resolution. You must be on the lookout for issues and circumstances that can affect your decision. Creative thinking and a willingness to "dig" beneath the surface will make you a more effective officer. This manual, as well as CBP's Policy Online Document Search (PODS) [http://\[redacted\]](http://[redacted]) reflects CBP's commitment to improve availability of timely and complete policy information for its officers. Referring to the Act and the regulations are only the beginning of your duties as a CBP officer. Supplemental materials provide insight into the regulations and clarify your legal duties.

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### 4.2 Sources and Organization of Immigration Law.

The Immigration and Nationality Act (the Act, INA) is the major source of immigration law. Any lawful action by CBP or by any of its officers with respect to immigration processing must be traced back to and authorized by the provisions of the Act. Provisions of the Act are often referred to by their position within the Act. Thus "section 235" refers to that section of the Act. The Act itself, part of the larger U.S. Code system, is contained at 8 U.S.C. §§ 1-1574, and particular sections are frequently referred to by their U.S.C. citation rather than their INA citation (e.g. section 235 of the INA may also be referred to as 8 U.S.C. 1225.)

The other major source of authority in immigration law is the Code of Federal Regulations. When Congress passes a provision of law, it often delegates authority to implement the law to the agency, consistent with the terms of the statute. Congress may provide that a certain class of aliens may be eligible for a particular benefit, but it is not until the Department issues regulations concerning details such as application procedures, filing fees, etc. that the statutory provisions come to life. Regulations, though not issued by Congress, have the same force and effect as the statute. The Department's immigration regulations are contained in Title 8 of the Code of Federal Regulations (CFR). Generally, but not exclusively, the numbering of the regulations tracks the numbering of sections in the Act. Rules dealing with section 235 of the Act would thus be found at 8 CFR part 235. Other parts of the Code of Federal Regulations may have an effect on immigration issues. This is especially so with State Department regulations, which can be found at 22 CFR. Generally, whenever you see a statutory citation, the relevant CFR title will track the United States Code title, so that 7 U.S.C. will lead you to 7 CFR.

While the statute and regulations are the primary source of law, materials that interpret these are also an important source. The Board of Immigration Appeals (BIA) in Falls Church, Virginia is the major appellate body deciding immigration matters. Its decisions have the force of law and are binding upon DHS officers. Significant BIA decisions are published and indexed to make them readily accessible by DHS employees as well as the general public. These decisions may be accessed on the DOJ website at

[http://www.usdoj.gov/eoir/vll/intdec/lib\\_indecitnet.html](http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html). Appeals are taken to the BIA from DHS decisions on adjudicative matters such as visa petitions and adjustment of status petitions, and are also taken from Immigration Court on matters such as removability and relief from removal. The Office of the Chief Administrative Hearing Officer (OCAHO) is similar, except it hears cases dealing only with fines and penalties. Internally, directives and policy memoranda are binding on CBP employees as are other policy issuances such as the materials contained in I-LINK. Many cases not appealable to the BIA are appealable to the Administrative Appeals Office (AAO), located in U.S. Citizenship and Immigration Services. Although less frequent, that office may also publish its decisions as precedent, in which case they are indexed and published in the same volumes as those of the BIA.

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### 4.3 Basic Research Methods.

Legal research is a search for authorities and standards to apply in resolving legal issues. As a beginning researcher, you need to know where to look for information, but in order to know where to look, you first need to know something about your subject. This problem reveals the fundamental principle of successful research: successful research is nothing more than a process of building upon what you already know. For example, you may have nothing more than a reference to a section of the Act. From that information, you can obtain the U.S. Code section. U.S. Code Annotated will often refer to judicial cases dealing with the particular section. The case will usually cite various relevant regulations, law review articles, and other interpretive materials. Those materials will in turn refer to other materials and issues. From a very small amount of information you are able to find a wealth of materials.

(a) Federal Regulations. The Code of Federal Regulations changes literally every day. Thus, although you may know the controlling regulations and your regulation may not be affected, you need to know how to find the latest version of a relevant regulation. While the changes you find may often be small, this is not always the case.

Federal regulations are published every day, chronologically, in the Federal Register. It is in the Federal Register that you will first see changes to the regulations. In addition to regulations, the Federal Register also publishes executive orders, presidential statements, and proposed changes to the regulations. When rules are published in the Federal Register, they almost always contain a preamble, which is a statement by the agency promulgating the rule both explaining the rule and the basis for issuance of the rule. By reading the preamble, you will often find guidance on how a specific provision of the regulations is meant to apply. Recent Federal Register notices relating to immigration matters can also be found in I-LINK, as well as through various websites. The USCIS website at [www.USCIS.gov](http://www.USCIS.gov) is a good source for Federal Register information relating to immigration matters. Another site for Federal Register information in general is [www.gpoaccess.gov](http://www.gpoaccess.gov).

After initial publication in the Federal Register, the regulations are compiled annually by subject and issuing agency and published in the more familiar Code of Federal Regulations. Several items in the Federal Register will help you determine if your regulation has been affected. At the beginning of each issue of the Federal Register you will find a table of contents arranged by agency name. This is followed by a "list of CFR parts affected" by that day's issue. You can quickly scan this list to determine if you need to read further in that day's issue. At the end of each day's issue, you will find a cumulative list of parts affected listing all the parts affected for the current month. The Federal Register also publishes on a monthly basis a pamphlet entitled: LSA: List of CFR Sections Affected. This list is also cumulative and lists by Federal Register page number each section affected. By following this process, you will ensure that you are aware of the most current version of the regulations.

(b) Board of Immigration Appeals (BIA) Decisions. Not all decisions of the BIA are published. While you may on occasion have access to unpublished Board decisions, these do not have precedential value. When first published, BIA decisions are designated with an "interim decision" number. Periodically, interim decisions are collected and published chronologically. There are currently 23 volumes of published precedent decisions entitled Administrative Decisions Under the Immigration and Nationality Laws of the United States. Once published in this format, they may still be referred to by their interim decision number but are more likely to be referred to by volume and page number. For example, 19 I&N 234 is found in volume 19, beginning on page 234. The most recent volume contains a subject index covering cases contained in volume 16 forward. Volume 15 contains an index for cases published in volumes 1-15. You can thus find relevant cases by searching under a subject heading in the index. Because the most recent decisions have not been published in this format, you need to check the "Index of interim decisions" periodically published by the BIA to make sure you have all the relevant case law.

It is equally important to be sure that the case law you are reading is still the law. Recent decisions often modify aspects of earlier ones, and occasionally overrule them completely. Checking the "index of interim decisions" mentioned above will give you some indication of whether the topic or case you are researching has been affected.

(c) Federal Court Decisions. DHS is often involved in litigation that affects its operations. Although not as common, judicial decisions not directly involving CBP can also affect operations. You need to understand these decisions and the authority of the Federal courts in order to know if they affect your duties. The federal court system is divided into three levels of authority. The district court is the trial body of the Federal court system; there are many district courts. Generally, district court decisions are only binding upon judges within that district. Thus, a statement of the law in the Northern District of California may not be the same as one in the District of Wisconsin. (In smaller states, there is only one district court, while larger states are divided into several districts). While the law in a District is binding only upon judges in that circuit and is merely advisory upon other judges in other circuits, a District Judge has authority to issue an order affecting the entire nation. Thus, injunctions or other orders requiring DHS to act in a certain way often issue from the District Courts.

Appeals from the District Court are taken to the Circuit Courts of Appeals. There are 13 circuits. Again, decisions of law are binding only upon judges within that circuit. From the Circuit level, appeals are heard by the Supreme Court of the United States. Decisions of the Supreme Court are binding upon any court in the United States.

It is important to be aware of the law in your district, circuit, and nationwide. Interpreter Releases, mentioned below, usually mentions recent judicial decisions affecting DHS. Internal CBP communications and transmittals will inform you of decisions affecting your duties. You should read these carefully when you receive them and store them for future reference.

(d) Supplemental Materials. There is a wealth of published materials to guide you through your immigration research. An excellent source of immigration information is the Department of State's Foreign Affairs Manual (FAM). This manual contains extensive procedural notes relating to the issuance of visas and other travel documents, as well as discussion of factors to consider in determining admissibility of visa applicants. 9 FAM 40 - 42 contains the most useful information for relating to visas and grounds of inadmissibility. The FAM can be accessed at <http://www.foia.state.gov/REGS/Search.asp>.

In addition to internal CBP and other government manuals, materials published for the private immigration bar are readily available and can provide significant help. The American Immigration Lawyers Association (AILA) publishes several useful items. AILA publishes regular mailings updating its readers on the latest developments in immigration law. Another significant source of current information relating to immigration issues is Interpreter Releases, published by West Publishing. This periodical is published weekly and provides its readers with the latest developments in immigration law. It also contains information about certain DHS policies and procedures and recent court cases that may affect your job.

There are several comprehensive sources of immigration law that are not as timely but cover much more material. Immigration Law and Procedure, more commonly referred to as "Gordon and Mailman", after the original authors, provides an overview of immigration law. Bender's Immigration Bulletin is another good source. Also useful is the State Department's Foreign Affairs Manual available at <http://www.foia.state.gov/REGS/Search.asp>. Volume 9 deals with visas.

There are many available materials containing current developments in the law. It is your responsibility to keep up to date on your job and the law by looking for these materials and reading them regularly. If you are unaware of changes in the law and policy applicable to your job, it is impossible for you to do your job correctly and professionally.

#### 4.4 Factual Research and Databases.

You will often be confronted with factual issues in dealing with an application. Most often, facts will arise which will lead you to believe that the alien has had prior involvement with immigration matters which he is not disclosing or may not know how to describe. Occasionally, you may believe that an alien has a criminal or other record (public assistance, child support, etc.) that may be relevant to your decision, but that information is not immediately available. In these situations, you will need to conduct factual research.

DHS maintains numerous databases containing information on aliens' immigration histories. **Chapters 31 and 33** of this manual describe some of the internal and interagency systems and contain instructions on how to access them. You should familiarize yourself with user's manuals for each system available at your location. It is important to fully and creatively develop a case. You should attempt to use as many avenues to gain information as possible. "A" numbers, sound-alike searches, names of family members, aliases, misspellings, and cross-searching between different databases should all be used to ensure that you obtain all possible information on an individual. As you gain experience, you will become more familiar with the various databases and search systems. It is only by performing thorough research that you will be able to fully develop a case and thus fully perform your duties.

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### Chapter 11: Persons Exempt Inspection.

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- 11.1 Inspection and Examination
- 11.2 Members of the U.S. and NATO Armed Forces
- 11.3 American Indians Born in Canada

#### References:

**INA:** Sections 235, 284, 289.

**Regulations:** 8 CFR 235, 289; 22 CFR 41.

### 11.1 Inspection and Examination.

Section 235 of the Act provides for the examination of all persons seeking to enter the U.S. by an immigration officer. Once determined not to be a citizen, the applicant will be inspected as an alien. There are, however, certain classes of aliens who are specifically exempt inspection and may not be excluded from the United States.

### 11.2 Members of U.S. and NATO Armed Forces.

#### 11.2 Members of U.S. and NATO Armed Forces.

(a) Members of U.S. Armed Forces. Alien members of the U.S. military forces entering under official orders are exempt from the controls of the INA, pursuant to 8 CFR 235.1(c), including the requirement to present a passport and visa. See section 284 of the Act. Such persons returning to the U.S. after a temporary trip are also eligible for this exemption without presenting any official orders. Upon request, such persons may be inspected and admitted pursuant to other provisions of the Act. However, if found inadmissible for any reason, the applicant will be so advised and permitted to enter without controls.

(b) Members of NATO Armed Forces. (1) Background. The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (commonly referred to as the Status of Forces Agreement, or SOFA) was signed by the United States on June 19, 1951 and entered into force on August 23, 1953. Under Article III of the SOFA, NATO military personnel are normally exempt from inspection and control procedures and, until recently, a Form I-94 was not issued. Such persons enter the United States upon presentation of military identification and official travel orders. Countries currently party to the SOFA are: Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, the United Kingdom of



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Great Britain and Northern Ireland, and the United States.

Section 235(a)(3) of the Act, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, requires the inspection of "all aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States." NATO aliens are not within the scope of this requirement. That is, NATO aliens continue to be exempt from inspection, but may be screened to confirm identity. (General Counsel opinion of April 7, 1999.)

(2) Inspection of NATO military personnel upon request. 8 CFR 235.1(c) provides that any alien who is a member of a force of a NATO country may, upon request, be inspected and his or her entry as an alien may be recorded.

NATO military personnel stationed in the United States for a significant period of time (over 6 months) need a Form I-94, Arrival/Departure Record, for "quality of life" reasons, such as to secure a social security number or a state-issued driver's license. To ensure that these persons routinely receive a Form I-94 at the time of inspection, the Department of State has recommended that NATO military personnel entering the United States for a significant period of time be issued a visa at a U.S. Embassy or Consulate abroad. Accordingly, although not required under the NATO SOFA, inspectors should anticipate that NATO military personnel stationed in the United States for a significant period may present a visa at the time of inspection so that a Form I-94 may be issued.

Service officers must be responsive to the requests of NATO military personnel for a Form I-94. A NATO military nonimmigrant who is an applicant for admission and intends to remain in the United States for a significant period of time and who does not have a visa may present a letter concerning the nature of the intended stay in the United States so that Service inspectors have a basis for issuing a Form I-94. Such a letter must include a specific and concrete explanation of the nature, location, and duration of the NATO member's stay in the United States, a request for a Form I-94 and the signature of the NATO country commander or designee in the United States where the alien is to reside for a significant period of time. The Form I-94 should be issued for the length of stay as specified in the individual's military orders. Form I-193 and fee are not required for such NATO military nonimmigrants. Individuals arriving in this manner would be classified NATO-2 through NATO-5. Should questions arise at the port-of-entry regarding proper classification, the inspector may wish to contact the Headquarters of the Supreme Allied Commander, Atlantic (SACLANT) at its number listed in paragraph (b)(9).

**Note:** NATO personnel already in the United States (i.e., not currently applying for admission) who will be here for six months or longer and are in need of a Form I-94 for such quality of life reasons may apply for one under the procedures set forth in paragraph (b)(8).

(3) NATO personnel not entitled to inspection and admission. Form I-94 issuance does not apply to short-term NATO stays, e.g., for routine military exercises or short-term training only (i.e., less than 6 months).

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(4) Issues regarding validity of NATO orders. If questions arise regarding the validity or authenticity of an alien's travel orders, contact SACLANT at the telephone number listed in paragraph (b)(9).

(5) Travel To Mexico and Canada by NATO personnel. Under the procedures set forth in paragraph (2), many NATO personnel in the United States for six months or longer should have a Form I-94. However, Service officers should be sensitive to the fact that a NATO military nonimmigrant who, for some reason, does not have a Form I-94 and is staying for a long term in the United States may need to enter the United States after a brief departure to Mexico or Canada, whether or not the trip was for pleasure or in conjunction with his or her duties. In order to receive a Form I-94, such a nonimmigrant must present his or her military identification, travel orders, and an appropriate letter, such as that described in paragraph (b)(2). In such cases, officers should feel free to verify the status of an applicant for admission directly with the NATO country commander or designee in the United States where the nonimmigrant is stationed or with SACLANT at the number listed in paragraph (b)(9). In these circumstances, Form I-94 should be issued only for the time period of the nonimmigrant's stay in the United States, as indicated by travel orders or the letter.

(6) Technical Experts. In discussions with the Department of State and the Service, the German Government has advised the Service that the number of military and civilian personnel arriving for long-term stays at Holloman Air Force Base in New Mexico will be doubling to over 6,000 during calendar years 1999 and 2000. The Department of State has determined that technical experts working for the German Government at Holloman will be provided with A-2 visas and issued Form I-94 through routine procedures.

(7) Partnership for Peace (PFP). The PFP was initiated in 1994 by the United States to enhance European security by establishing strong links between NATO, its new democratic partners in the former Soviet bloc, and some of Europe's traditionally neutral countries.

The PFP SOFA incorporated by reference most of the terms of the NATO SOFA, although PFP countries are not full NATO members. The number of nations that have ratified the PFP SOFA continues to grow. At this time, such countries are Albania, Austria, Bulgaria, Estonia, Finland, Georgia, Kazakhstan, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Romania, the Slovak Republic, Slovenia, Sweden, Uzbekistan, and on a provisional basis, the Ukraine. The Department of State has determined that PFP personnel are entitled to A-2 visa status.

In addition, PFP military personnel have been entering the United States for short-term military exercises and training since 1996. Under the PFP SOFA, the same exemptions are provided as under the NATO SOFA regarding passports, visas, inspection and control. Also, like NATO nonimmigrants, PFP personnel in the United States for short-term stays (e.g., military exercises) do not need to be inspected, and should not receive a Form I-94. (General Counsel opinion of April 7, 1999.)

Similarly, in a few instances, personnel from PFP countries have entered the United States

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pursuant to the PFP SOFA for significant periods of time to do business at SACLANT, or a subordinate headquarters, on their military travel orders and identification cards. If entering for a significant period of time, such persons may prefer to secure a Form I-94 for the same quality of life reasons that impact their NATO counterparts, either by presenting a visa or an appropriate letter with a request for a Form I-94, as discussed in this memorandum. Service inspectors should be responsive to requests for a Form I-94 where PFP personnel will remain in the United States for a significant period. Most individuals arriving in this manner would be classified as A-2. Should questions arise at the port-of-entry regarding proper classification, the inspector may wish to contact SACLANT at its number listed in paragraph (b)(9).

(8) Issuance of Form I-94 to NATO or PFP personnel currently in the United States. Form I-102 may be used by the small number of NATO or PFP personnel who are already residing in the United States for a significant period and who did not present a visa or otherwise secure a Form I-94 at the time of admission. Accordingly, NATO or PFP personnel remaining in the United States for a significant period who need a Form I-94 in order to obtain a social security number, a driver's license, or for other quality of life reasons, must submit their requests on a completed Form I-102, without fee, with a copy of their military identification and travel orders, and a letter from their unit commander, or designee, in the United States which contains: (1) arrival information (including where, when, and aboard what vehicle arrival occurred); (2) the reason for the request; and, (3) information regarding the intended length of stay. The complete request package should be mailed to USINS Nebraska Service Center, P.O. Box 87526, Lincoln, NE 68501-2521.

(9) Contact Telephone Number for SACLANT. Questions arising at the port-of-entry or elsewhere regarding the status of a nonimmigrant in NATO or a PFP official in A-2 classification may be referred to SACLANT directly at (757) 445-3640 or (757) 445-3783. SACLANT's after hours telephone contact number is (757) 445-3400.

(10) Contact Telephone Numbers for INS Headquarters. Operational questions about NATO matters may be directed to the Office of Inspections.

(Revised IN00-23)

### **11.3 American Indians Born in Canada. (Revised IN99-11)**

#### **11.3 American Indians Born in Canada.**

(a) General. Under section 289 of the Act, American Indians born in Canada, with at least 50% American Indian blood, cannot be denied admission to the United States. The applicant bears the burden of proof in establishing eligibility. Usually, this is accomplished by presenting identification such as a tribal certification that is based on reliable tribal records, birth certificates, and other documents establishing the requisite percentage of Indian blood. The Canadian Certificate of Indian Status (Form IA-1395) issued by the Canadian Department of Indian Affairs in Ottawa specifies the tribal affiliation but does not indicate percentage of Indian

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blood. Membership in an Indian tribe in Canada does not necessarily require Indian blood. Once the claim to 50% Indian blood has been established, the applicant can freely enter the U.S., regardless of the purpose or duration of the trip, even if technically inadmissible or previously deported.

**Note:** See also Chapter 56 of the Adjudicator's Field Manual regarding persons who are already in the United States and are applying for evidence of status pursuant to section 289 of the Act.

(b) Creation of Record of Admission for Lawful Permanent Residence. If a person claiming such status seeks to enter to reside permanently in the U.S., complete the following steps to document the first entry:

(1) Review documentation submitted to support the claim, including birth records, tribal records, etc. Officers at locations which frequently encounter Indian tribal members should familiarize themselves with tribal documentation common to the area. Make photocopies of all documentation. Depending upon the facts and documentation presented, a sworn statement may also be required to clarify any issues in doubt.

(2) Complete a central index check and open an "A" file at the port of entry in accordance with local procedures.

(3) Conduct an Interagency Border Inspections System (IBIS) check on all applicants over the age of 14.

(4) If the documentation is acceptable and no adverse information develops from the central index query, complete Form I-181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The words "Canadian born American Indian admitted for permanent residence" must be endorsed on the Form I-181. Under the box marked "Other Law" indicate section 289 of the INA.

(5) Complete Form I-89, Data Collection Card, including fingerprint, proper photograph, and other required data. The admission classification is **S13**. Forward the completed Form I-89 and a copy of the Form I-181 for card issuance, in the manner prescribed for immigrant visas. [See Appendix 15-8.]

(6) If the alien is 14 years of age or older, take a complete set of fingerprints on Form FD-258, in compliance with section 264 of the Act. These fingerprints need not be forwarded for clearance to the FBI, but should be retained in the file.

(7) Issue a temporary Form I-551 to facilitate travel until the actual Form I-551 is produced.

(8) Include copies of all supporting materials in the file, placing the Form I-181 on top. Forward the "A" file to the district file room.

(c) Denied Applications. In any instance where admission as a lawful permanent resident based

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on claimed American Indian status is denied, either because documentation is lacking, a claim to eligibility turns out to be false, or because the claimant does not possess the requisite percentum of American Indian blood, an A-file should be created. Place a memorandum in the file indicating that the application has been denied and the reasons therefore. Verbally advise the applicant of the decision.

There is no appeal from the decision, although the claimant may renew his or her request if and when he or she is able to overcome the basis of the decision. Depending on the circumstances, such an applicant may be permitted to withdraw or may be processed for expedited removal in accordance with the procedures described in Chapter 17.15.

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### Chapter 12: United States Citizens and Other Nationals.

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12.1	Inspection of U.S. Citizens
12.2	Evidence of Citizenship
12.3	Oral Testimony
12.4	United States Passports
12.5	United States Passport Waivers
12.6	Other Documentary Evidence
12.7	Loss of Citizenship
12.8	Non-Citizen Nationals
12.9	Northern Mariana Islanders
12.10	Nationals of Former Trust Territories

**INA:** Sections 101(a)(22), (29), (38), 215, 235, 301 - 310.

**Other laws:** Pub. L. 94-241(Covenant for Commonwealth of the Northern Marianas Islands), 48 U.S.C. 1681; Pub. L. 98-213 (Act of December 8, 1983); Pub. L. 99-239 (Compact of Free Association Act of 1985), 48 U.S.C. 1901; and Pub. L. 99-658 (Compact of Free Association between the United States and the Government of Palau), 48 U.S.C. 1931.

**Regulations:** 8 CFR 212.1 (d), 235, 22 CFR 53.1-2.

### 12.1 Inspection of U.S. Citizens.

When you are convinced that an applicant for admission is a citizen of the United States, the examination is terminated. This is not to say that your role as an inspector is always completed at that time. Listing of the subject in a lookout system may dictate further action, such as notifying Customs or another agency of the person's entry.

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It must be emphasized that the grounds of inadmissibility contained in 212(a) of the INA are applicable only to aliens. Consequently, the examination of a person claiming to be a United States citizen is limited to matters required to establish present citizenship. Once you are satisfied the person being examined is a U.S. citizen and any required lookout query has been completed, the examination is over.

Temporary detention of a U.S. citizen for extensive questioning generally requires reasonable suspicion that the person is involved in illegal activity. Inspectors cross-designated to perform Customs inspections may, of course, continue questioning for Customs purposes. If probable cause to arrest the U.S. citizen cannot be developed within a reasonable period of time, the person must be released.


It is important to note that although the United States does not formally recognize "dual nationality"; many other countries do. It is not unusual to encounter a United States citizen (even native born) bearing evidence of both United States citizenship and foreign nationality. For example, a child born in the United States to a foreign national may, under the laws of that country, be entitled to its parent's citizenship and be included in the parent's passport. Under certain circumstances, that document may be used for identification and entry, if presented in conjunction with a birth certificate or other evidence of U.S. citizenship. Specific provisions relating to passport requirements for United States citizens are outlined in 22 CFR 53.1 and 2.

### 12.2 Evidence of Citizenship.

Any time documentary evidence of citizenship is required (e.g., when a passport is required of a U.S. citizen returning from outside of the Western Hemisphere) or whenever documentation is voluntarily presented by an applicant, you should make an effort to review the documents. If there is any question as to the subject's citizenship, close scrutiny is necessary to determine that the documents are unaltered, genuine, valid, and belong to the bearer. In the instance where documentation is volunteered by an applicant, you should make a cursory review of the document(s), even if your preliminary inquiries have allowed you to make a determination of the applicant's United States citizenship. A brief review should be made, if for no other reason, because the applicant may have gone to considerable effort to obtain a particular document and may feel the Service is failing in its responsibility if the document is considered unimportant.

### 12.3 Oral Testimony.

It must be emphasized that in many instances where a United States passport is not statutorily required of an arriving citizen applicant, a person may establish United States citizenship by oral statements.



## 12.4 United States Passports.

(a) General. A United States passport (even if expired) may be accepted as evidence of citizenship in the absence of information showing that the holder has expatriated. Service personnel performing inspections of returning United States citizens must be familiar with passport requirements and periodically review the *Passport Studies* manuals provided in each Service office. The three types of passports issued by the United States are described therein (with frequent revisions of format), and it is incumbent upon you to keep up to date on any changes.

Essentially, the ordinary passport is issued to a citizen of the United States who is going abroad for personal or business reasons. It is valid for a period of ten years from the date of issuance unless specifically restricted to a shorter time, in which case the document is usually a "duplicate" issued in replacement of one lost or stolen.

An official passport is issued to an officer or an employee of the United States Government proceeding abroad in an official capacity. Official passports are valid for five years or the duration of the official's duties abroad, not to exceed five years.

A diplomatic passport is issued to a foreign service officer, a person of the diplomatic corps, to a person having diplomatic status because of his or her foreign mission, or by reason of the office the bearer holds. There is no fixed time limit on the validity of a diplomatic passport other than the limit presupposed by the maintenance of the bearer's actual diplomatic status.

United States passports should be stamped on request of the bearer and in accordance with local policy.

(b) Travel Restrictions. Periodically, because of national emergencies, the Department of State will place restrictions on the use of a U.S. passport for travel to certain countries. If you encounter a citizen who is returning from travel to a restricted area, lift the passport and prepare a memorandum to the Department of State containing the basic passport data and facts surrounding the travel, and that the passport appears to be invalid pursuant to 22 CFR 51.73. Attach a separate sheet containing any details which may be of use to DOS in pursuing the matter. Provide the bearer with a copy of the memorandum, but not the separate detail sheet. Mail the passport, memorandum, and detail sheet, via certified mail, to:

Department of State  
Passport/Legal (Room 300)  
1425 K St., NW  
Washington, DC 20522-1705

(c) Dependents on U.S. passports. A spouse, minor child, or minor unmarried sibling may

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be included on the passport of a U.S. citizen if such spouse, child, or sibling is also a U.S. citizen. In a situation where a passport is required for travel, a passport is valid for the reentry of the dependent only if accompanying the principal passport holder. A dependent may, however, present such a passport as evidence of citizenship when returning from a place where no U.S. passport is required.

### 12.5 United States Passport Waivers.

(a) General. Although primarily charged with the responsibility of determining citizenship, you are required to verify the validity of a United States passport when one is required by law. When an applicant fails to present a passport or presents an expired document, the immigration officer shall, if satisfied that the person is a United States citizen, advise the individual of the necessity of having a valid U.S. passport. Although technically you are waiving the passport requirement for the Department of State, no form need be completed. In addition, there is no fee collected by INS. (Paragraph (a) revised 10/21/98; IN99-02)

(b) Merchant Seamen. The passport office has determined that the fee for a passport waiver will not be charged in the case of a bona fide U.S. merchant seaman who has lost his or her documents while outside the U.S., provided the seaman's status is reflected in the ship's Articles and he or she is returning to the U.S. on board that vessel. Mark the DS-1423: "Mariner--No Fee" and forward it to the Department of State.

### 12.6 Other Documentary Evidence.

Other common documents that may help to establish United States citizenship include the following:

- (1) A Certificate of Naturalization,
- (2) A Certificate of Citizenship,
- (3) Citizen's identification cards (Service Forms I-179 or I-197),
- (4) State Department Certificates of Identity and Registration (Forms FS-225 and FS-225A) [See 22 CFR 50.9.],
- (5) The United States Coast Guard Mariner's Document indicating U.S. nationality (known as a Z-card, this document may also be issued to LPRs),
- (6) Birth Certificate showing a place of birth in the U.S. accompanied by good identification, and
- (7) Baptismal certificates or other forms of secondary evidence of U.S. citizenship.

Most documented false claims to United States citizenship will be carrying birth certificates,



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baptismal certificates, or both. These documents are most easily obtained, altered, or manufactured. A more detailed discussion of false claims to U.S. citizenship is contained in Chapter 17.

### 12.7 Loss of Citizenship.

There are various ways in which a citizen of the United States, whether naturalized or native-born, may lose citizenship. During the course of an inspection, you may have reason to question an applicant for admission regarding this topic. It is an extremely complex issue, and making such a determination must be carefully and thoroughly handled. Sections 349 through 357 of the INA specify the ways in which citizenship can be lost. Service regulations for the corresponding sections and Department of State regulations at 22 CFR 50 provide information and guidance on the subject. You may find endorsements in U.S. passports which lead to questions regarding possible loss of citizenship. For example, Great Britain inserts a *Certificate of Partiality* in a passport to show the holder enjoys the benefits accorded a British subject. Such a certificate, standing alone, does not establish an individual's loss of U.S. citizenship. Such evidence should, however, prompt further inquiry by the inspecting officer.

### 12.8 Non-Citizen Nationals.

There is a technical distinction between a citizen of the United States and a national of the United States. All citizens of the U.S. are nationals, but all nationals are not citizens. The term national of the United States is defined in section 101(a)(22) of the INA, and explained in detail in section 308 of the INA. At present, American Samoans (including Swains Islanders) are the only United States non-citizen nationals. They will generally present a Certificate of Identity showing United States nationality, a United States passport, or a birth certificate. Upon admission, stamp the travel document of any American Samoan or Swains Islander, since these individuals must establish three months residence in the U.S. for naturalization purposes.

Section 308 also provides for acquisition of nationality at birth outside the United States or American Samoa for a child born to a national of the United States. Prior to 1986 there was no provision for a child born to one national and one alien parent. Pub.L. 99-396 (Aug. 27, 1986) amended Section 308 by adding Section 308.4 which provides for acquisition at birth to those born outside of the U.S. or an outlying possession with one alien parent and one national parent. The amendment was unusual in that it made the change retroactive and provided that nationality to someone born before the amendment was only acquired when the applicant established to the satisfaction of the Secretary of State that the requirements of the statute were met. Therefore, any person born before August 27, 1986 who claims nationality through one parent must present a United States passport showing he or she is a "national."

### 12.9 Northern Mariana Islanders.

The Commonwealth of the Northern Mariana Islands is a former Trust Territory that concluded an agreement with the United States. The agreement was concluded in 1976, but did not become effective until November 3, 1986. The agreement is titled a Covenant to Establish a

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Commonwealth of Northern Mariana Islands. Public Law 94-241 is the implementing statute and the Covenant.

The Commonwealth of the Northern Mariana Islands is composed of 14 islands with the majority of the population residing on Saipan, the capital, Rota, and Tinian. The other islands are: Uracas, Maug, Asuncion, Agrihan, Pagan, Alamagan, Guguan, Sarigan, Anatahan, Farallon de Medinilla, and Aguijan. Most of the second group are uninhabited except for Pagan due to volcanic activity, but many have been inhabited at one time or another.

During various periods between 1979 and implementation of the Covenant in 1986, citizens of the Commonwealth of Northern Mariana Islands were admitted as "though they were citizens of the United States."

On November 3, 1986 the Covenant became effective and under certain conditions Citizens of the Northern Mariana Islands became United States Citizens. All persons born in the Commonwealth after November 3, 1986 are citizens at birth under section 301 of the INA. The Covenant provides for three categories of persons who acquired citizenship upon implementation of the Covenant. It should be noted that each category required residence in the Commonwealth or the United States at the time of implementation and only one allowed residence outside the Commonwealth at the time of implementation. Under the terms of the Covenant a citizen of the Trust Territory born in the Northern Marianas but residing in the Marshalls, for example, did not acquire citizenship on November 3, 1986 because the Covenant requires residence in the Marianas or the United States. Even though not required many of those who became citizens on November 3, 1986 applied for and received U.S. Passports. In 1989 the Service had a program for two years that provided for issuance of a Northern Mariana Card which is evidence of U.S. citizenship [See 8 CFR 235.12.].

A person who claims birth in the Mariana's prior to 1986 and United States Citizenship and who does not present a passport or card should be questioned carefully to determine if they meet the conditions in the Covenant. The Immigration Offices in Honolulu and Agana, Guam and the United States Passport Office in Honolulu are excellent sources for assistance in resolving claims to citizenship.

### **12.10 Nationals of Former Trust Territories.**

See Chapter 15.13.

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### Chapter 13: Returning Residents.

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13.1	Inspection of Returning Lawful Permanent Residents (LPRs)
13.2	Returning Residents Lacking Evidence of Alien Registration
13.3	Returning Military Dependents
13.4	Question of Meaningful Departure
13.5	Returning Residents with SB-1 Visas
13.6	Readmission of Temporary Residents
13.7	Conditional Residents

#### References:

**INA:** Sections 101(a)(13)(C), 211, 212, 215, 216, 216A, 223, 235.

**Regulations:** 8 CFR 210.1, 211, 212, 216, 245a.2

#### 13.1 Inspection of Returning Lawful Permanent Residents (LPRs).

The primary inspector shall admit a resident alien returning to an unrelinquished domicile, if not otherwise inadmissible under section 212(a), upon presentation of an unexpired Permanent Resident Card (Form I-551), a reentry permit, refugee travel document (indicating lawful permanent residence), or temporary evidence of LPR status such as an Alien Documentation Identification and Telecommunication (ADIT) stamp. The question of whether or not a returning resident is seeking admission as defined in section 101(a)(13)(C) of the Act or has relinquished his or her domicile is a complex one, and is discussed in Chapter 13.4. Since all but the earliest version of Forms I-551 are machine readable, conduct an IBIS query, where available, to verify the card's continuing validity.

A returning resident alien is not required to present a valid passport for reentry into the U.S. (see 8 CFR 211.2), although most will have one since a passport is often required for entry into a foreign country. When presented, the passport should be stamped, endorsed "ARC" or "R/P," as appropriate, and, if not already written on the passport, the alien's "A" number should be written on the page with the admission stamp. Review reentry permits for restrictions and stamp them with your admission stamp upon admission. Remember that a reentry permit does not guarantee admissibility [See section 215(d) of the Act.]. Despite this fact, a reentry permit may be accepted by many foreign countries in lieu of a resident alien's national passport. Also, in some instances, a foreign country will refuse to place a visa in the passport of another country which it does not officially recognize, but it may place the visa in a reentry permit.

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Refugee travel documents may, in some instances, be issued to resident aliens. The class of admission will be included on the data page of the document. See Chapter 21.9 for special procedures relating to LPR "commuters."

In addition to considering the general grounds of inadmissibility applicable to returning residents, such as public charge, there are several things you should be aware of:

- An LPR who accepts a position that would qualify the LPR for status as an A, E or G nonimmigrant under section 101(a)(15)(A), (E) or (G) may be inadmissible as a permanent resident unless the LPR has waived or is willing to waive any special immunities to which the alien would be entitled because of the position that would qualify the LPR for status as an A, E or G nonimmigrant. See section 247(b) and 8 CFR 247.11.
- An LPR who has been outside the United States for more than one year (two, if presenting a reentry permit), may have abandoned residence. Other indicators of possible abandonment of residence are employment abroad, immediate family members who are not permanent residents, arrival on a charter flight where most passengers are non-residents with return passage, lack of a fixed address in the U.S., or frequent prolonged absences from the United States. In questionable cases, it is appropriate to ask for other documentation to substantiate residence, such as driver's licenses and employer identification cards. [Procedures for processing abandonment of residence cases are discussed in Chapter 17.10]; and
- An LPR who no longer has the qualifying marital or employment relationship upon which his or her immigration was originally based may be inadmissible based on fraud. The classification code on the Form I-551 will permit you to determine the basis for original admission in order to ask appropriate questions. A table of immigrant categories is included in Appendix 13-1 of this manual.

You must also carefully determine that the individual in front of you is the rightful holder of the Permanent Resident Card. The attempted use of legitimate Forms I-551 and reentry permits by look-alike imposters is a common occurrence. Likewise, DHS has uncovered applications for reentry permits submitted by look-alikes using valid Permanent Resident Cards for identity.

A thorough knowledge of the security features on the current Permanent Resident Card and reentry permits, and a knowledge of detection techniques for photo substitutions will help you detect counterfeit and altered cards. The DHS provides numerous aids, such as document alerts, to assist you in developing proficiency in this area [See discussion in Chapter 32.5.]. When you are faced with a possible fraudulent applicant, it may also be useful to question the applicant regarding the basis for his or her original immigration or adjustment of status. Codes and explanations of current and past

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immigrant classifications are included in Appendix 13-1. The nationality code included on each alien registration card can also be helpful in verifying if the bearer is the rightful holder [See Appendix 13-2].

In addition to expertise in security features and techniques for identifying counterfeit and altered immigration benefit documents, the CBP officer must also become well versed in navigating established immigration benefit computer systems. Prompt, accurate validation of LPR status can be achieved by cross checking the returning resident's evidence, i.e. ADIT Stamp, Re-entry permit, Form I-551 with the information found in the Image Storage and Retrieval System (ISRS), CIS and CLAIMS. [Procedures for validating LPR status using the noted computer systems can be found in Chapter 31.3]

### **13.2 Returning Residents Lacking Evidence of Alien Registration. (Revised 5/16/05; CBP 9-05)**

Ports-of-entry (POEs) encountering returning lawful permanent residents (LPR) lacking evidence of alien registration because said evidence has been secured at home or in a safety deposit box may offer a visa waiver pursuant to section 211(b) of the Act, with fee, or defer the inspection. If the LPR claims the card has been lost or stolen, the POE may accept a Form I-90, Application to Replace Permanent Resident Card, with fee. These actions may be considered once the identity of the LPR has been confirmed, preferably by checking against the data contained in the Image Storage and Retrieval System (refer to Chapter 31.4) and the validity of the applicant's status has been verified in the Central Index (Central Index) System. Fine proceedings, discussed in Chapter 43, may also be appropriate. Any actions taken are to be recorded in the IO-95 Results Screens.

a. Visa Waiver. A LPR requesting a visa waiver is to be enrolled in ENFORCE through the creation of a Form I-193, Application for Waiver of Visa or Passport, if otherwise admissible. The applicant requesting the waiver is to review the information recorded on the printed form for accuracy and sign where indicated. Collect the required fee.

- If the waiver is approved, stamp the original Form I-193 and passport with an admission stamp and endorse both with "211(b)". Upon completion, the LPR is to be given a copy of the Form I-193 and be admitted as a returning resident. The original Form I-193 is to be forwarded to the Files Control Office (FCO) for inclusion in the A-File.
- If a waiver is denied under section 211(b) of the Act, the applicant may be placed in removal proceedings before an immigration judge.

b. Deferred Inspection. Deferred inspection should be limited to a LPR who:

- will be able to produce the requisite document within a few days; or,

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- claims to have lost or had the Form I-551 stolen, is unable to pay the Form I-90 fee at the time of initial inspection and has not been previously deferred for presentation of the Form I-551 document. The LPR will be required to file a Form I-90 with U.S. Citizenship and Immigration Services (USCIS) within the next 30-days.

The applicant is to be enrolled in ENFORCE and procedures set forth in Chapter 17.10 are to be followed. Advise the LPR that a Form I-90 may be filed electronically at <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing [www.INFOPASS.USCIS.gov](http://www.INFOPASS.USCIS.gov). When appearing for the deferred inspection, the LPR will be required to present evidence, generally a Form I-797 Receipt Notice, that the Form I-90 has been properly filed.

c. Form I-90 Application. Once identity and admissibility has been established, the LPR is to prepare a Form I-90 in duplicate. Collect the required fee. Endorse the reverse side of both copies with an admission stamp and the notation "Admitted 211(b), to file I-90". One copy is to be routed to the alien's A-file. The second form will be returned to the LPR in order to complete the filing of the application. Process the second form in the following manner:

- In the fee block notate "duplicate--fee previously collected".
- On the instruction page, legibly record the text "To schedule an appointment to complete the application process you should refer to <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing [www.INFOPASS.uscis.gov](http://www.INFOPASS.uscis.gov) ", if not preprinted on the form.
- Staple the receipt to the form.
- Give the form to the LPR, advising him/her to contact USCIS as noted on the form to obtain photographs and a fingerprint, and complete the filing of the application.

#### (d) Special Notes.

If at the time of the current application for admission existing records indicate that the LPR has been issued a Form I-90 or a deferred inspection had been scheduled to file a Form I-90 previously, the POE should take a Form I-193, with fee. Another Form I-90 should not be filed or deferred inspection should not be authorized. If the LPR requires a replacement Form I-551, refer the applicant to <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing [www.INFOPASS.uscis.gov](http://www.INFOPASS.uscis.gov).

A resident alien who has turned 14 years of age and has not replaced his or her alien registration card should be advised of the registry requirements of section 264 of the Act. Central Index should be queried during any secondary inspection, prior to deciding what course of action is appropriate. Evidence of current status and the applicant's prior alien registration card history will be available in the Central Index.

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A LPR presenting an expired 10-year Form I-551 should be advised to file a Form I-90 with USCIS. No further action is to be taken.

### 13.3 Returning Military Dependents.

The spouse and children of a member of the U.S. Armed Forces, or a civilian employee of the U.S. Government (including those paid from non-appropriated funds such as *Stars and Stripes* or the Army and Air Force Exchange System) returning from a foreign assignment are exempt many normal requirements for returning residents pursuant to 8 CFR 211.1(a). If a dependent is a conditional resident, and the period of conditional residence has expired, the alien should be admitted and advised to file Form I-751 within 90 days.

### 13.4 Question of Meaningful Departure.

Prior to April 1, 1997, if a lawful permanent resident was believed to be inadmissible, you had to first make a determination whether his or her absence was "meaningfully interruptive" of permanent residence. This topic is the focus of a key court decision, *Rosenberg vs. Fleuti*, 374 U.S. 449 (1963), as well as *Matter of Kane*, 15 I&N Dec. 258 (BIA 1975) and *Matter of Montero*, 14 I&N Dec. 399 (BIA 1973). The IIRIRA amended section 101(a)(13) of the Act to codify into statute several of the issues addressed in *Fleuti* by defining the terms "admission" and "admitted". A lawful permanent resident is NOT considered to be seeking admission unless the alien:

- has abandoned or relinquished that status;
- has been absent continuously for more than 180 days;
- has engaged in illegal activity after departing the U.S.;
- has departed under legal process seeking removal;
- has committed certain criminal offenses;
- is attempting entry without inspection; or
- has entered the U.S. without authorization by an immigration officer.

If you believe a lawful permanent resident may be inadmissible or no longer entitled to lawful permanent resident status, you must first determine whether the alien is seeking admission within the meaning of section 101(a)(13)(C). If you determine the returning resident is seeking admission, you should refer the alien for removal proceedings under section 240 of the Act as an alien inadmissible under section 212(a) of the Act. If you determine that the alien is not seeking admission, but may be deportable under section 237 of the Act, you may initiate

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removal proceedings under section 240 of the Act, charging the alien as deportable. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. This subject, especially issues involving possible abandonment or relinquishment of status, is a complex one, and may be resolved by the immigration judge during removal proceedings.

Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. Although the charging document, Form I-862, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a port-of-entry are authorized to issue a Notice to Appear only to arriving aliens, as defined in 8 CFR 1.1(q). If a lawful permanent resident is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in 8 CFR 239.1, such as the ADDE or ADDI, in accordance with local policy.

The fact that a returning resident may not be considered to be seeking admission does not exempt the alien from having to present the required immigration documents to establish that he or she holds that status. [8 CFR 211.1 and 235.1(d)(1)]. See Chapter 17.15(e) for procedures for dealing with aliens who claim to have been admitted for lawful permanent residence. See also section 240A of the Act concerning authority of the Attorney General to cancel removal of LPR aliens with at least seven years continued residence. (Amended 3/9/98; IN98-10)

### **13.5 Returning Residents with SB-1 Visas. (Revised IN99-11)**

A returning resident who has been abroad for more than one year may be issued an SB-1 visa by an American consular officer if the alien's stay abroad was not an abandonment of residence and the alien fully intended to return to the United States. The inspecting officer should review the facts surrounding the departure and reasons for the time spent abroad. If the officer is convinced the alien is indeed returning to his or her residence, the inspection should be concluded.

The immigrant visa packet (OF-155) is handled somewhat differently than a new immigrant visa.

If original I-551 is attached:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED] and forward it, with the visa packet, a completed Form I-90, and Form I-89 to the recipient indicated in appendix 15-8. On Form I-89, complete the entire Transaction 1 side of the form and blocks B, D, and E of the reverse side, as appropriate. If the I-551 is returned to the alien, so note the OF-155.

If an original Form I-151 or no alien registration card is attached:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 13.6 Readmission of Temporary Residents.

(a) Aliens already granted temporary resident status. A temporary resident under section 210 of the Act, Special Agricultural Worker Program (SAW), with an unexpired Form I-688 who has not relinquished residence may be readmitted after an absence of up to 1 year [See 8 CFR 210.4(b)(3) and 211.1.]. Temporary residents under section 245a of the Act, Legalization Program, must not have been absent more than 30 days, or an aggregate of 90 days since obtaining status, and be returning to an unrelinquished residence [See 8 CFR 245a.2(n)(3) and 211.1.]. Status information concerning pending cases may be found in CLAIMS or CIS. If otherwise admissible, admit the applicant, endorsing the I-94 with the appropriate classification code [For complete code listing, see *Adjudications Field Manual*, Appendix 24-1 ].

(b) Aliens who are applicants for temporary resident status. Except as described in subparagraph (c) below, holders of Form I-688A, applying under §245a must have an advance parole in order to travel [See 8 CFR 245a.2(n)(2).]. Such persons attempting reentry without an advance parole should be placed in removal proceedings. Holders of Forms I-688A, applying under §210 may travel without an advance parole using their unexpired I-688A, after an absence of up to 1 year, provided they are returning to an unrelinquished residence [See 8

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CFR 210.4(b)(2).].

(c) CSS/LULAC class members. Two large groups of legalization applicants have been included as plaintiffs in ongoing litigation against the Service's regulations administering the legalization program. Members of the first group are referred to as "CSS" (Catholic Social Services) cases; members of the second group are referred to as "LULAC" (League of United Latin American Citizens), recently renamed "Newman," cases. Although often referred to collectively, there are certain distinctions between the two classes. One major distinction concerns reentry after travel outside the United States. LULAC plaintiffs, identified in CIS as LU1, must obtain advance parole prior to departing the United States and can be properly placed in removal proceedings, including expedited removal, if they attempt to re-enter without having obtained advance parole.

On January 16, 1998, the Ninth Circuit Court of Appeals issued an amended opinion in CSS v. Reno. CSS class members are no longer entitled to employment authorization, stays of removal, or any other immigration benefit based on their claimed CSS class membership. If an alien is determined to be a CSS class member (COA=CS1, CS2, CS3, or CSS), the alien should be processed as any other applicant for admission and, if found to be inadmissible, may be placed in removal proceedings, including expedited removal, if appropriate. If, however, such an individual is in possession of a valid, unexpired Form I-512, Advance Parole Authorization, issued on the basis of his or her CSS class membership, and he or she is not otherwise admissible, he or she may only be placed in section 240 removal proceedings. (Paragraph (c) revised 3/9/98; IN98-10)

(d) Zambrano, Perales, SEVIS DS-2019, and Proyecto litigation. Class members for these ongoing cases must obtain an advance parole, Form I-512, prior to departing the U.S. and may be placed in removal proceedings if they attempt reentry without obtaining advance parole authorization.

### 13.7 Conditional Residents.

A conditional resident (CR-1, C5-1 etc.) is admissible if applying before the second anniversary of admission for conditional residence. The conditional resident may also be admissible if he or she has a boarding letter from a U.S. consulate, has been stationed abroad under government civilian military orders, or is the spouse or child of a person stationed abroad under government orders.

Otherwise, the applicant for admission as a conditional resident must have filed a joint petition or an application for waiver, Form I-751 (marriage-based cases) or Form I-829 (investment-based cases), in the U.S. within the 90 days before the second anniversary but not more than 6 months prior to the application for entry.

If none of those conditions exist, the inspector may defer the applicant to file Form I-751 or I-829 if there is reason to believe the Service will approve a petition or waiver.

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If the applicant is not admissible, place him or her in removal proceedings. See 8 CFR 235.11.

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### Chapter 14: New Immigrants.

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- 14.1 Inspecting New Immigrant Applicants
- 14.2 Passport Requirements
- 14.3 Inspection of Family Groups
- 14.4 Immigrant Admission Procedures
- 14.5 Admission of Certain Immigrant Children without Immigrant Visas
- 14.6 Conditional Residents
- 14.7 Immigrant Commuters

#### References:

**INA:** Sections 101(a)(27), 201, 203, 211, 212, 216, 216A, 235.

**Regulations:** 8 CFR 211, 216, 221; 22 CFR 42.

#### 14.1 Inspecting New Immigrant Applicants.

The primary inspector processing a new immigrant must complete a variety of actions efficiently and accurately, since the actions taken are essential steps in creating a permanent record for the arriving alien. Examine the immigrant visa carefully to ensure it is valid and unaltered. Generally, an immigrant visa is valid for six months from the date of issuance. For immigrants who will lose eligibility because of age, the validity period may be shortened. For a child adopted by a U.S. citizen in U.S. Government service abroad, an immigrant visa may be issued for a validity of up to three years, until the citizen returns to the United States. Certain persons chargeable to Hong Kong may have visas valid until January 1, 2002. Although alteration and counterfeiting of immigrant visas is uncommon, such cases have been detected so you should carefully examine each visa presented.

You must verify eligibility for the visa classification indicated on the visa page. There are occasional misclassifications by the adjudicator or consular officer processing the visa. If you are unsure of requirements for the classification, refer to sections 101(a)(27), 201, or 203 of the INA for definitions and requirements. Department of State regulations at 22 CFR 42.73 detail procedures followed by consular officers issuing immigrant visas. Normally, you will need to insure that either a qualifying relationship or offer of employment continue to exist. In addition, you must assess whether immigrants specified in sections 216 or 216A of the Act are admissible for a two-year conditional period. A table of immigrant visa classification codes is included in Appendix 13-1 to assist you in determining the requirements of each immigrant category. If a "derivative" beneficiary, that is, an immigrant receiving his or her visa based on a visa issued to a spouse or parent, you must verify that the principal immigrant is either accompanying the dependent or has previously immigrated. A discussion of "accompanying" status is included below in Chapter 14.3.

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Verify that the personal data and address on the front of the visa are correct. This is critical to insure the information on the alien registration card is correct and that the new immigrant receives his or her card without delay.

If the immigrant holds or previously held a position which would entitle him or her to diplomatic immunity, verify that a waiver of rights and privileges, Form I-508, has been signed.

An I-94 is not required for a new immigrant.

A discussion of the medical examination requirements for arriving immigrants is contained in Chapter 17.9. A discussion of waivers available for technical problems involving immigrant visas is contained in Chapter 17.5.

### **14.2 Passport Requirements.**

Most immigrants are not required to have a valid passport as a condition of admission, but as a practical matter the vast majority will have needed a passport for departure from their country of origin and will therefore present a passport with the immigrant visa packet. Passport requirements for arriving immigrants are specified in 8 CFR 211.2 and should also be indicated by the consular officer on the front of the visa.

### **14.3 Inspection of Family Groups.**

When members of a family group arrive together and present themselves for inspection as immigrants, you should inspect them as a group. You should not admit any member until you are certain each member of the group is admissible. This is because an intending immigrant who derives preference status (family based, employment based, or special immigrant) as an accompanying spouse or child, or who is charged numerically to the foreign state limitation of another family member as specified in section 202(b) of the INA, is inadmissible if the principal alien or alien whose foreign state was charged numerically is not admitted.

The term "accompanying" as used in this context does not necessarily mean that the derivative alien is physically accompanying the principal alien. An "accompanying" alien may actually seek admission up to four months after the principal has been admitted. An "accompanying" alien may not, however seek admission based on his or her derivative status before the principal alien has been admitted [See *Matter of Khan*, 14 I & N Dec. 122 (BIA 1972)]. "Accompanying" is defined in 22 CFR 40.1(a), and generally includes any qualifying derivative alien issued an immigrant visa within four months of visa issuance, adjustment of status, or registry of the principal immigrant. Absent evidence of fraud or error, you should accept the consular official's finding that an alien has derived status as an accompanying alien.

Similar to "accompanying " aliens are those who are "following to join" a principal beneficiary. These aliens are permitted to obtain the status of the principal alien so long as the "following to

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join" alien possesses the required spousal or parental relationship with the principal. There is not necessarily any time limit involved so long as the required relationship still exists (See 9 FAM 40.1, N.7). The classic example involves the married child or child over age twenty-one seeking admission as the unmarried child of an immigrant or as the minor child of an immigrant. Because the qualifying relationship no longer exists, the alien cannot "follow to join." It is irrelevant that at the time the visa was issued the relationship did exist. Thus, in either the "accompanying" or "following to join" situation, you should be careful to verify that the relationship between the principal and dependent aliens existed at the time that the principal alien obtained his or her status and continues to exist at the time that the derivative alien seeks admission based on that relationship.

### **14.4 Immigrant Visa Admission Processing Procedures. (Revised by CBP 3-04)**

(a) Processing at the Port-of-Entry (POE). After it has been determined that the immigrant is admissible to the United States, the Immigrant Visa (IV) Packet must be processed following the instructions set forth in paragraphs (1) through (8). The U.S. Department of State (DOS) issues a Machine Readable Immigrant Visa (MRIV) in the immigrant's passport. If a passport is unavailable, the DOS will issue the MRIV on a Form DS-232. Existing copies of the older version OF-232 are still valid. The Forensic Document Lab Alert 2004A-35 issued February 20, 2004 provides the details of the new MRIV. The traditional Standard Immigrant Visa (IV) Packet, Optional Form 155A may be issued by a U.S. Consulates or U.S. Embassy awaiting MRIV deployment.

On June 28, 2004, the DOS began incorporating the language of the Alien Documentation Identification and Telecommunication System (ADIT) Stamp, commonly referred to as the "Temporary I-551 Stamp", into the secure MRIV by electronically printing the following statement in the body of the MRIV directly above the machine-readable zone:

**"UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING  
PERMANENT RESIDENCE FOR 1 YEAR"**

In early September 2004, the DOS began issuing MRIVs with an "Immigrant Data Summary" sheet. The summary sheet includes a digitized photograph of the immigrant, an admission stamp block and the data necessary for the creation of the Form I-551. The MRIV packets issued between June 28, and early September 2004 do **not** include the immigrant data summary sheet, traditional IV Packet, Optional Forms 155A/155B cover page, or any other type of cover sheet. During that time, the DOS issued IV packages in a sealed envelope identified with the name of the immigrant. All IV packets contain the Form DS-230 Part 1, Application for Immigrant Visa and Alien Registration, supporting documentation and photographs.

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Effective August 2, 2004, the photograph requirement standard became full frontal face position, commonly known as passport style photographs. Both three-quarter and full color frontal photographs will both be accepted until **September 1, 2004**. After that date, only passport style photos will be accepted. Three-quarter photos attached to the old-style OF-155B forms in immigrant visa packets or included in the MRIV packets issued prior to September 1, 2004 by DOS will be accepted when processing an immigrant visa at the POE.

(1) Review the Immigrant Visa Packet: Confirm the applicant's identity by comparing the photograph on the MRIV or the photograph attached to the IV to the immigrant. Cross check the identity with the passport. If a passport is not required and unavailable, reference 8 CFR 211.2, compare the immigrant's appearance to government-issued identification containing the immigrant's name, date of birth and/or signature. Verify the immigrant's information listed on the data summary sheet, Form DS-230 or standard IV, particularly the gender, marital status and mailing address. The address field should reflect the most current and accurate mailing address for the immigrant. The phrase "In care of" should be used whenever appropriate to ensure proper delivery.

- MRIV with Data Summary Sheet. Any changes or updates to the MRIV packet should be made directly and clearly to the data summary sheet, validated with the officer's initials. If the officer corrects or modifies any data on the data summary sheet, he or she must attach and sign an explanatory memorandum.
- MRIV Lacking Cover Page. If the officer determines that any data on the Form DS-230 requires correction or modification, he or she must circle the item number on the application. Attach a signed explanatory memorandum identifying the item and requested correction. The officer should not make any data changes directly on the Form DS-230.
- Traditional IV. Any changes or updates to the traditional IV should be made directly and clearly to the IV, validated with the officer's initials. If the officer corrects or modifies any data on the IV, he or she must attach and sign an explanatory memorandum.

(2) Endorse the Immigrant Visa Packet. The DOS will provide the immigrant with a visa packet, to be processed in the following manner:

### (A) Machine Readable IV with Data Summary Sheet:

- Stamp the "Admission Stamp" block with the admission stamp. Ensure that the stamp can be easily read and is not too light or smudged. The CBP officer's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both are required data elements for the creation of the Form

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- Legibly record the class of admission on the line provided on the admission stamp.

**(B) Machine Readable IV, Without Data Summary Sheet:** The Form DS-230 submitted to the DOS is usually printed on one-sided paper.

- Stamp the reverse (blank) side of the Form DS-230 with the admission stamp. Ensure the impression is clear and distinct. The inspector's admission stamp serves as evidence of lawful admission as a permanent resident and establishes the immigrant's date and place of admission. Both of these items are required data elements for creation of the Form I-551.
- Legibly record the class of admission on the line provided on the admission stamp.
- Legibly record the A-Number from the upper right corner of the MRIV below the admission stamp.
- Create a photocopy of the MRIV to be forwarded to the service center with the IV Packet.
- POEs are not required to endorse the Form DS-230 with the "Processed for I-551" stamp or record the manner of arrival i.e. flight, vessel data, train, bus, etc.

In the event that the MRIV packet contains a Form DS-230 that is printed on both sides of the paper (double sided):

- Stamp the upper left corner of the front side of the Form DS-230 near the eagle with the admission stamp. Ensure that the stamp can be easily read and is not too light or smudged. The CBP officer's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both of these items are required data elements for the creation of the Form I-551.
- On the line provided on the admission stamp, legibly record the class of admission.
- Across the center top of the Form DS-230, legibly record the registration number from the upper right corner of the MRIV.
- Create a photocopy of the MRIV to be forwarded to the service center with the IV Packet.
- POEs are not required to endorse the Form DS-230 with the "Processed for I-551" stamp or record the manner of arrival i.e. flight, vessel data, train, bus, etc.

**(C) Standard Immigrant Visa (IV) Packet, Optional Forms 155A or 155B**

- Stamp the "Action by Immigration Inspector" block with the admission stamp. Ensure that the stamp can be easily read and is not too light or

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smudged. The inspector's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both are required data elements for the creation of the Form I-551.

- Place a "Processed for I-551" stamp in the block labeled "USPHS" (located in the lower right corner) using security ink as specified in IFM 34.10. On the "Valid to" line, enter a date that is 12 months from the date of admission.
- Record the applicable flight or vessel data in the block "The Immigrant Named Above Arrived in the United States Via (Name of Vessel or Flight Number of Arrival)". If traveling across a land border, designate privately owned vehicle (POV), on foot, train, bus, etc.

(3) Issue Temporary Evidence of Permanent Residence Status. DHS must provide the immigrant with temporary evidence of permanent resident status while the permanent Form I-551 is being processed.

**(A) MRIV with Temporary I-551 Language.** MRIVs issued after June 28, 2004 should contain temporary I-551 language electronically printed in the body of the MRIV directly above the machine-readable zone. Upon the CBP officer's placement of an admission stamp on the MRIV, the alien is admitted to the United States as a permanent resident. The stamp should be placed on the upper portion of the MRIV so that part of it overlaps onto the adjoining page. Endorse the upper left corner if possible. Ensure that the stamp can be easily read and is not too light or smudged. When an MRIV bearing this statement and contained in an unexpired foreign passport is endorsed with an admission stamp it constitutes a temporary I-551, valid for one year from the date of endorsement on the admission stamp. This document is acceptable for travel and employment purposes.

Under limited circumstances, if a passport is unavailable, the DOS will issue the MRIV on a Form DS-232. Existing copies of the older version of the OF-232 are also still valid.

**(B) MRIV Lacking Temporary I-551 Language or Standard IV.** If the alien is in possession of a passport that does not contain a MRIV with temporary I-551 language (which for this purpose may be either valid or expired):



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- Endorse the appropriate passport in the manner outlined above if the immigrant is a minor child accompanying (and listed in the passport of) his or her parent. Include a separate "Processed for I-551" and admission stamp for each child indicating the child's name, A-Number and class of admission.

**(C) No Passport.** If the alien is not in possession of a passport or a MRIV with temporary I-551 language, an Arrival/Departure Record, Form I-94 can be used to create a temporary Form I-551. The creation of a Temporary I-551 should be limited to immigrants not in possession of a passport. The arrival portion of an Arrival/Departure Record, Form I-94 is used to create the document, in accordance with these instructions.



(4) Check the Photographs: The IV should contain recent photographs of the immigrant. The DOS standard for IV photographs requires that (except in countries where the consular officer determines that facilities for producing color photographs are unavailable or where obtaining color photographs would cause applicants undue

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hardship) each applicant, regardless of age, furnish two identical photographs, to be included with the IV.

Extras that may be available will be in an envelope stapled in the upper right corner of the IV below the supporting documents.

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- The photograph should be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 to 1 3/8 inch;
- [REDACTED]
- The photograph must exhibit an acceptable level of contrast. The photograph will not scan properly if the person has a very fair complexion and the image is light in comparison to the background. If the person has a very dark complexion and there are a lot of shadows in the picture, it will not scan correctly;
- Hats and headgear are not authorized, unless worn daily for religious reasons; and,
- Digital photographs are acceptable on photo quality paper. An electronic copy is not acceptable.

(B) Record the A-number and alien's name in pencil, not a ballpoint pen, on the back of the photographs. Do not apply excessive pressure on the photo, as it may cause the A-number to appear on the photograph, making it unusable.

(C) Insert the photos in an envelope, glassine if available, and staple the envelope to the Form I-89 where the form indicates its placement. Officers should take care not to staple through the photograph(s), or transfer ink to the face of the picture from their pen, hands, or other documents.

[REDACTED]

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(7) Secure the original documents in the IV: Original documents such as birth certificates, adoption decrees, or marriage certificates, contained in the IV packet are considered part of the record and should not be disturbed, with the exception of the SB-1 visa classification explained above. The DHS will return original documents to the immigrant upon written request. In this instance, a copy of every document returned must be substituted for the original and marked "Exact copy of

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original", with the date and officer's initial.

(8) Conduct a final review: As a final step prior to allowing the immigrant to depart from the inspection area:

- Review the Form I-89 and IV for completeness and accuracy. Officers should exercise extreme care to ensure the placement of the admission stamp and other processing steps are completed prior to dismissing the immigrant from the inspection area and forwarding the IV packet to the service center. If the IV does not contain the inspector's admission stamp, the service center will not be able to create a Form I-551 subsequently requiring corrective action on the part of the service center and the POE.
- Remind the immigrant, if he/she is being admitted conditionally, that an application for removal of conditions must be filed within the 90-day period immediately PRIOR TO the second anniversary of the date of admission.
- Advise the immigrant that the Form I-551 will be mailed to the address on the immigrant visa. Instruct the immigrant that if he/she moves prior to the receipt of the card a forwarding address should be provided to the post office. The notification should include all family members to ensure everyone receives his/her Form I-551. If the address is incorrect or missing, the service center does not have a mechanism for contacting the immigrant; as a result card production is suspended until an inquiry about the status of the card is made. Generally, immigrants file an Inquiry About Status of I-551 Permanent Resident Card, Form G-731, with the appropriate service center to locate a missing card.
- Inform the immigrant to check with their USCIS district office if they have not received their card within 4 to 5 months. If the service center is notified promptly, there is a chance that a card that was returned as undeliverable can be re-sent before it is destroyed.

(b) Transmittal of Immigrant Visa Package to the Service Center. POEs shall observe the following steps to transmit the immigrant visa package to the Service center:

(1) POE Review of IVs: Prior to forwarding to the designated service center, conduct a quality control review of all IV's to ensure that the required data elements, biometrics and photographs meet Service standards.

(2) Separate out USPHS cases. Separate out visas requiring Public Health Service attention (following local SOPs) and forward such visas to the USPHS address indicated in Appendix 15-8).

(3) Log and prepare visas for mailing. Log the visa data on the Immigrant Visa Log. When packaging the visas, include a manifest indicating the POE, quantity of visas and date of entry.

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(4) Mailing Immigrant Visa. Within 24 hours of alien's admission to the United States, forward the entire immigrant visa packet with the completed Form I-89 to the appropriate Service Center at the address specified in Appendix 15-8

#### **14.5 Admission of Certain Immigrant Children without Immigrant Visas. (Revised IN99-11) (Amended IN98-21) (Revised IN98-07)**

Children may be admitted as new immigrants without presenting an immigrant visa under two circumstances:

A child born to an accompanying parent after issuance of an immigrant visa to the parent but prior to the parent's initial admission as an immigrant (XE3, XF3, XR3 or XN3); or

A child, under 2 years of age, born during a temporary absence of a lawful permanent resident mother if the child is accompanying the parent who is reentering the U.S. as a returning resident for the first time after the birth of the child (NA3).

You must establish the relationship between parent and child, generally by a birth certificate (with English translation) and, of course, the admissibility of the parent. There have been incidents of attempted fraud in such cases, so in doubtful cases, corroborating evidence such as medical records may be required. Verify the parent's LPR status using the Central Index System.

It is important that you properly record the admission of such new immigrants. If you are processing a child born subsequent to the issuance of an immigrant visa, use the following admission symbols:

- **XE3** Parent is an employment based immigrant;
- **XF3** Parent is a family based immigrant;
- **XR3** Parent is an immediate relative; or
- **XN3** Parent is none of the above.

A child admitted with a returning resident parent is admitted in class NA3.

Upon admission, stamp the passport (the parent's passport if the child has none) with the admission stamp and endorse it with the admission symbol above. Stamp the "temporary I-551" stamp in the passport. Complete Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence. Check the block marked "other

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law" and note the block 8 CFR 211.1(b)(1). Place an admission stamp on the right side of the block reserved for use by visa control office and endorse it with the appropriate visa symbol. Complete Transaction 1 of Form I-89, including a photograph, and forward the I-89, I-181, and copy of the birth certificate to the recipient indicated in appendix 15-8 for creation of the alien file and production of the child's alien registration card. Forward a copy of the I-181 to the file of the parent.

#### **14.6 Conditional Residents.**

Admission procedures for conditional immigrants (based on spouse or investment) are discussed in 8 CFR 235.11. Procedures are generally the same as for other immigrants, but in spouse cases, if the marriage upon which the visa is issued occurred more than 2 years prior to the date of admission, you must admit the alien unconditionally, regardless of the visa symbol on the immigrant visa. Conversely, if you encounter an immigrant visa classified as unconditional, where the qualifying marriage occurred less than 2 years before the date of admission, you must admit the immigrant conditionally.

#### **14.7 Immigrant Commuters.**

Refer to Chapter 21.9.



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### Chapter 15: Nonimmigrants and Border Crossers.

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- 15.1 General Considerations and Processing Instructions
- 15.2 Passports
- 15.3 Visas
- 15.4 Requirements and Procedures for Nonimmigrant Classes
  - (a) Foreign government officials
  - (b) Visitors
  - (c) Transits
  - (d) Crewmembers
  - (e) Traders and investors
  - (f) Students
  - (g) Representatives to, and employees of, international organizations
  - (h) Temporary workers
  - (i) Representatives of information media
  - (j) Exchange aliens
  - (k) Fiance(s) of U.S. Citizens and Nonimmigrant Spouses of U.S. Citizens
  - (l) Intracompany transferees
  - (m) Vocational students
  - (n) Certain special immigrant spouses and children
  - (o) Aliens of extraordinary ability
  - (p) Artists, athletes and entertainers
  - (q) International cultural exchange visitors
  - (r) Religious workers
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- 15.5 NAFTA Admissions
- 15.6 Transit without Visa Admissions
- 15.7 Visa Waiver Program
- 15.8 Guam Visa Waiver Program
- 15.9 Border Crossing Card (BCC) Admissions
- 15.10 Entry of Nonimmigrant Workers during Labor Disputes
- 15.11 Special Interest Aliens
- 15.12 Correction of Erroneous Admissions
- 15.13 Nationals of Former Trust Territories
- 15.14 Hong Kong Travel Documents
- 15.15 Cancellation of nonimmigrant visas under section 222(g) of the Act.
- 15.16 Student and Exchange Visitor (SEVIS) Processing

#### References:

INA: Section 101(a)(15), 212, 214, 217, 231, 232, 233, 235.  
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**Other law:** Pub. L. 99-396 (Omnibus Territories Act).

**Regulations:** 8 CFR 212, 214, 231, 232, 233, 235; 22 CFR 41.

### 15.1 General Considerations and Processing Instructions. (Revised 5/16/05; CBP 9-05)

(a) General. As a primary inspector, the majority of your workload will deal with nonimmigrant aliens. You must be thoroughly familiar with the requirements for admission of the many nonimmigrant classes you encounter in order to function effectively as an inspector. Familiarity with the requirements for various categories will increase your efficiency in detecting inadmissible aliens and will accelerate the admission process for those who meet the necessary requirements.

(b) Preparation of Forms I-94 and other INS documents.

General: You perform a vital role in creating an accurate record of admission, the basis for all further immigration-related activity that a nonimmigrant may engage in while in the United States. Your processing of the basic Form I-94, Arrival-Departure Record, and other documents you encounter during the inspection process is a critical part of the agencies' system of records. It is important that you properly record relevant notations such as file numbers, waivers, and any restrictions on admission in the appropriate places on agency forms. Precise adherence to standards for entries on these forms is critical to creating reliable databases. In turn, reliable databases are essential to the CBP law enforcement and intelligence missions.

The specific requirements for issuing Form I-94 are set forth in 8 CFR 235.1(f). The Form I-94 may be issued for a single entry, or, at land border ports-of-entry, it may be valid for multiple entries for frequent border crossers. See Chapter 21.7. A special edition of Form I-94 is required for Visa Waiver Program aliens (Form I-94W) and certain land border POEs generating the form electronically (Form I-94A).

Forms I-94A are issued at designated land border POEs. The Form I-94A is identical to the Form I-94; however, the biographical, visa, passport and U.S. destination data is electronically printed on the Form I-94A, Departure Record. This information is electronically captured in IBIS eliminating the need to produce a hardcopy of the Form I-94 Arrival Record for submission to the contractor for data entry. This system is also used to generate the Form I-94W.

(A) Airport/seaport Processing: As a CBP Officer, you must take such reasonable time as needed to ensure that all Forms I-94 presented to you during your inspection activities are filled out completely, are legible, and accurately reflect the nonimmigrant's passport or other appropriate travel document information.