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file, consular post having jurisdiction over the alien's permanent residence and the POE file. Ports are required to maintain records of VWP refusals for 1 year.

(4) VWP Asylum Requests and Procedures. A VWP applicant is not entitled to a hearing before an immigration judge, but a VWP applicant who seeks asylum must be referred to an immigration judge for a limited asylum hearing under 8 CFR 208.2(b).

- Complete the procedures in Chapter 15.7(g)(3) as for any VWP refusal.
- Complete Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and the appropriate category within that paragraph, to refer the alien to the judge for the asylum hearing.
- The alien may be placed in INS custody pending the asylum hearing, or, if detention space is not available, the alien may be paroled.
- Asylum claimants under the VWP are counted statistically as refusals in column D of the G-22.1 report, and should also be counted on line 121.

(5) Parole and Deferral. A VWP applicant for admission must convince the examining immigration officer that he or she is clearly and beyond a doubt entitled to be admitted and is not inadmissible under section 212(a) of the Act. The deferred inspection provision contained in 8 CFR 235.2(a) shall not apply to an applicant for admission under section 217 of the Act, except that the inspection or removal of a VWP applicant for admission may only be deferred if the alien is paroled for criminal prosecution or punishment. There are otherwise no provisions for deferred inspections. A VWP applicant for admission may only be paroled for "urgent humanitarian reasons" or a "significant public benefit" on an individual, case-by-case basis.

(A) Urgent humanitarian paroles should not be granted unless:

- the alien is arriving for a medical emergency where the alien cannot obtain the necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa and admission process;
- the alien is needed in the United States in order to donate an organ or other tissue for transplant;
- the alien is arriving to visit a close family member in the United States who is critically ill;

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- the alien is arriving in the United States to attend the funeral of a family member;
- the alien is too ill to depart the United States immediately;
- the alien is placed in 240 removal proceedings pursuant to a challenge issued under section 235(b)(3) of the Act (only if detention is inappropriate or unavailable); or
- the alien is accompanying or following to join a person who arrived in the United States for any of the purposes listed in paragraphs (A) through (E) of this paragraph.

(B) Significant public benefit paroles should not be granted unless:

- the alien's presence is needed to assist the United States Government in a matter, such as a criminal investigation, espionage investigation, or other similar law enforcement activity;
- the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment;
- the alien is paroled to assist in a civil emergency affecting the public health, safety, or welfare; or
- the alien is paroled into the custody of a State or local law enforcement agency to testify as a material witness in a criminal prosecution.

(6) VWP Removal Procedures. Aliens admitted under the VWP program who remain longer than authorized or otherwise violate their status may be removed from the U.S. without a hearing before an immigration judge. This applies regardless of whether the alien admitted under the VWP was originally entitled to admission under the program or not. For example, if an alien gained admission by falsely claiming to be a national of a VWP country (including presentation of a counterfeit or impostor passport from such country), and was later discovered to be here in violation of the law, he/she would still not be entitled to a section 240 hearing before an IJ. Inspectors will not normally be involved in these cases, since most are interior apprehensions, but this may vary by district. When such alien is encountered, the arresting officer should:

- Prepare an I-213;
- Take a sworn statement (if appropriate);

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- Issue a letter to the alien notifying him/her that the INS has determined that he/she violated the conditions of admission under the VWP program and that he/she is being removed from the U.S., without a hearing before an immigration judge, in accordance with the provisions of the VWP.
- Except in cases where the alien entered over the land border, issue Form I- 288, notifying the carrier that it is responsible for removing the alien and that it must make appropriate transportation arrangements; and
- Prepare Form I-296 notifying the alien that he/she is precluded from reentering the U.S. for a period of 10 years (unless the alien has been previously removed or the alien is an aggravated felon, in which case the relevant greater bar would apply). The Form I-296 would be endorsed (including taking the fingerprint and attaching a photograph) and issued at the time of the alien's actual removal from the U.S.
- An INS lookout is created automatically when the case is closed in the Deportable Alien Control System (DACCS), which interfaces nightly with NAILS, thereby creating the lookout.
- Although an alien admitted under the VWP program is not entitled to a hearing before an immigration judge, one who seeks asylum must be referred to an immigration judge for a limited asylum hearing under 8 CFR 208.2(b). Complete the procedures above as for any VWP removal, and then use Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and the appropriate category within that paragraph, to refer the alien to the judge for the asylum hearing.

(h) Satisfactory Departure. In accordance with 8 CFR 217.3(a), a district director may, in emergent circumstances, grant an alien admitted under the VWP program satisfactory departure for a period of 30 days or less, provided that the request for satisfactory departure is made during the period of admission and the alien is still in status at the time of the request. This provision was developed for emergent cases only, e.g., in situations where aliens become ill and cannot depart the U.S. within their 90-day period of admission. It is not to be used in lieu of processing the aliens under VWP removal proceedings outlined in Chapter 15.7(g)(6).

(i) Readmission after Departure to Contiguous Territory or Adjacent Islands.

(1) General. Aliens admitted under the VWP may be readmitted to the U.S. after a departure to foreign contiguous territory or adjacent islands for the balance of their original admission period, provided they are otherwise admissible and meet all the conditions of the VWP, with the exception of arrival on a signatory carrier,

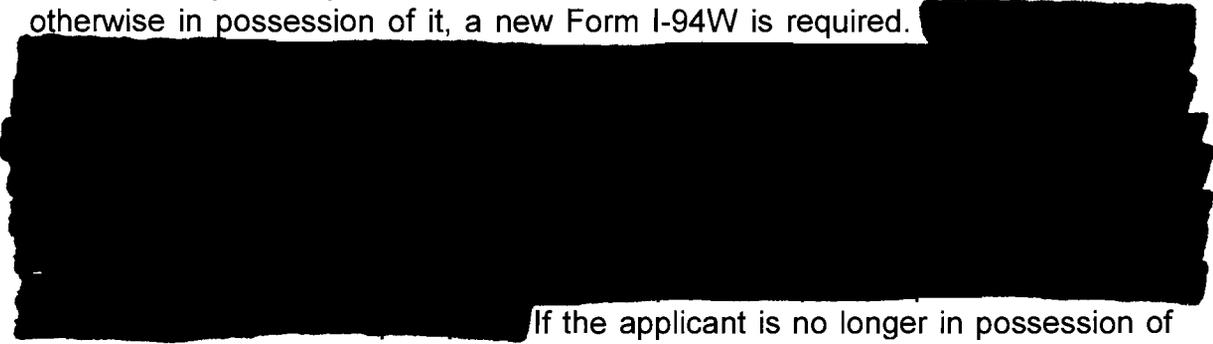
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in accordance with 8 CFR 217.3(b). The inspecting officers also have the discretion to grant the applicants entirely new periods of admission, providing they are arriving on signatory carriers. The following sections discuss the criteria, procedures, liability ramifications for the carriers, and define the term "adjacent islands" for the purposes of the VWP.

(2) Conditions for Readmission. As discussed above, aliens admitted under the VWP may be readmitted to the U.S. under the VWP after a departure to foreign contiguous territory or adjacent islands provided that:

- their authorized period of admission has not expired,
- they plan to depart the U.S. prior to the expiration date of their period of admission,
- they present valid, unexpired passports which reflect admission to the U.S. under the VWP, and
- they continue to meet all criteria set forth in 8 CFR 217 and section 217 of the Act, with the exception of arrival on a signatory carrier.

If the alien still has the original endorsed departure portion of the Form I-94W, admit the alien for the balance of his/her original admission period. If the original endorsed departure portion of the Form I-94W was lifted, or if the alien is not otherwise in possession of it, a new Form I-94W is required.

 If the applicant is no longer in possession of the endorsed departure portion of the Form I-94W at a land border POE, he/she must pay the requisite fee for the new Form I-94W.

If the alien needs to stay in the U.S. for longer than the original period of admission, the officer can consider granting another 90-day period of admission, provided the alien meets the requisite criteria. These cases are considered new admissions and the officers should follow the applicable procedures provided in Chapter 15.7(c), Air and Sea POE Arrivals, or Chapter 15.7(d), Land Border POE Arrivals. Officers should be aware of the potential for fraud in certain cases of repeated entries, although legitimate cases should be given due

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consideration.

If the original period of admission has already expired, the alien cannot be considered for readmission and must meet all the requirements for a new admission into the U.S.

(3) New Admission. Officers must treat those aliens applying for entry after expiration of the original admission period as applicants for entirely new admission. Follow the applicable procedures in Chapter 15.7(c), Air and Sea POE Arrivals, or Chapter 15.7(d), Land Border POE Arrivals, discussed earlier in this chapter.

(4) Carrier Considerations. Reentry during the original admission period need not be on a signatory carrier. Liability of the original carrier, if any, is unaffected by such brief departures. It is important to note that the original carrier retains liability ONLY if the applicant is readmitted for the balance of the original VWP admission. If the applicant is given an entirely new admission period, the new carrier, if there is one, assumes any liability and is also subject to the signatory carrier requirements of the VWP.

(5) Definition of Adjacent Islands. The term "adjacent islands" is defined in section 101(b)(15) of the Act, and for the purposes of the VWP includes: Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Marie-Galante, Martinique, Miquelon, Montserrat, Saba, Saint-Barthelemy, Saint Christopher, Saint Eustatius, Saint Kitts- Nevis, Saint Lucia, Saint Maarten, Saint Martin, Saint Pierre, Saint Vincent and Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and other British, French and Netherlands territory or possessions bordering on the Caribbean Sea.

### (j) Special Passport Considerations.

(1) General. All VWP document intercepts and related intelligence should be reported through usual channels to the Headquarters Office of Intelligence (HQINT). It is particularly important in the case of VWP countries and documents that HQINT be apprised of any relevant activity. The rightful holders of passports from the designated VWP countries are eligible for admission under the VWP, provided they meet all the requirements in Chapter 15.7(b), Documentary Requirements, and are otherwise admissible. However, certain countries may impose limitations and/or special restrictions governing the issuance of and eligibility for their passports, which may affect the VWP.

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(2) United Kingdom Passports. Only British citizens with unrestricted right of abode in the United Kingdom are eligible for VWP admission. If the national status block on the data page of the passport is endorsed "British citizen" the holder is eligible for the program. If the national status block is endorsed "British Subject: Citizen of the United Kingdom and Colonies," page five must be endorsed "Holder has the right of abode in the United Kingdom" in order to qualify for the VWP program. If the notation "British Subject: Citizen of the United Kingdom and Colonies" is crossed out, page five, or another referenced page must have the endorsement "National Status: British citizen" in order to qualify for VWP admission. The newer machine-readable, burgundy-colored, British passports qualify for VWP admission if the words "European Community" appear at the top of the cover page and the nationality on page four is endorsed "British Citizen."



(k) Authority, References and Related Sections. The primary authority for the VWP is section 217 of the Act and 8 CFR 217. However, there are other related sections in both the statute and the regulations on affiliated subjects and their impact on the VWP. Chapter 15.7 is the primary chapter on the VWP in the IFM, incorporating statutory, regulatory and procedural information. Many of the other related chapters in the IFM that impact the VWP have been referenced throughout Chapter 15.7. However, the following list is provided as a supplemental reference:

- (1) Chapter 15.1, General Considerations
- (2) Chapter 15.2, Passports
- (3) Appendix 15-2, Validity of Certain Foreign Passports (6-month list)
- (4) Chapter 17.6, Preparing Removal or Prosecution Hearings
- (5) Chapter 17.10, Abandonment of Lawful Permanent Residence Status
- (6) Chapter 17.13, Inadmissible Aliens, VWP Cases

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- (7) Chapter 17.15, Expedited Removal
- (8) Chapter 21.9, Alternative Inspections Systems
- (9) Chapter 23.3, Inspecting Cargo Vessels
- (10) Chapter 31, Service Records, particularly 31.4 (Service Lookout Systems), 31.5 (Posting, Maintaining and Cancellation of Lookouts), and 31.6 (Lookout Intercepts)
- (11) Appendix 31-4, Lookout Case Codes
- (12) Chapter 42.3, VWP Agreements
- (13) Appendix 42-2, VWP Signatory Carrier List
- (14) Chapter 43, Fines and Liquidated Damages, particularly 43.2 (Administrative Fine Violations) and 43.3 (Processing Administrative Fines at POEs)

Contained within the chapters listed above are further references to relevant sections of the statute and the regulations. Any further information and future enhancements can be accessed via the search/query option in INSERTS.

### **15.8 Guam Visa Waiver Program. (Revised IN01-04)**

(a) General Description. The Guam Visa Waiver Program (GVWP) is found in Section 212(l) of the Act. It was created by Section 14 of Public Law 99-396 (Aug. 27, 1986). Regulations pertaining to the Guam Visa Waiver Program are found in 8 CFR 212.1(e). The program allows nationals of designated countries to be admitted to Guam for 15 days for business or pleasure with their stay restricted to the Territory of Guam only. Carriers must sign a separate agreement, Form I-760, to transport applicants under the GVWP. The GVWP is also distinguished from the VWP in that a prior violation of the program does not make one ineligible in the future. Prior to enactment of section 245(i) of the Act in 1994, adjustment of status was prohibited. Section 245(i) provided for the adjustment of status of GVWP aliens.

Applicants for admission from a country included in both the GVWP and the VWP will be inspected under the program determined by the documentation they present.

(b) Documents Required. A GVWP applicant must have a passport valid for 6 months beyond the period of intended stay, a return-trip ticket, a completed Form I-736, and a completed Form I-94.

(c) Processing Procedures. Check Form I-736 and Form I-94 for completeness and

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make sure Form I-736 has been signed. If inspection determines the applicant is admissible, endorse the I-94 with the proper class of admission: GB for nonimmigrant visitor for business or GT for nonimmigrant visitor for pleasure. The period of admission will be for 15 days. Stamp the passport with the appropriate endorsement. Staple Form I-94 to the top of Form I-736 and route to the contractor.

(d) Refusals. Aliens who attempt entry under the GVWP, but are found inadmissible by the inspecting officer, are removed from the United States without further administrative hearing unless they seek asylum. The port director or officer-in-charge, or an officer acting in that capacity, has the authority to order removal of an applicant under this provision. Because the inspecting officer's decision is, as a practical matter, final, you must exercise particular care to ensure removals are handled fairly and thoroughly documented.

Ensure the Form I-736 for a refused GVWP applicant is completed and signed. If the alien declines to sign the I-736, he or she is not considered a GVWP applicant. In that case, follow procedures outlined in Chapter 17.6, for institution of removal proceedings. In addition, prepare a memorandum of facts for institution of fine proceedings against the carrier, as described in Chapter 43.3.

If the alien has signed the I-736, open an "A" file, take a sworn statement to establish inadmissibility, and endorse the passport with the file number, date, and port code. Endorse both portions of the I-94 with "refused," the applicable INA section, and line stamp or enter the date, port, and your stamp number. Enter the reason for refusal in block 26 of the form. Provide the alien a copy of the sworn statement and a copy of the I-94, free of reference to any lookout intercept. Prepare and serve Form I-259, Notice to Detain, Remove, or Present Aliens, on the responsible carrier to remove the alien. Prepare a lookout request as described in Chapter 31.5 Forward the arrival section of the I-94 stapled to the top of the Form I-736 for data entry. Photocopy the cover, data page, and any other relevant passport pages, as well as any other relevant materials. Distribute copies of these materials to the A file, consular post having jurisdiction over the alien's permanent residence and the port-of-entry file. Ports are required to maintain records of GVWP refusals for one year.

Refusals under the GVWP will be shown in the NIIS system as class "GR".

(e) Asylum Requests. For processing GVWP applicants seeking asylum, complete Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and typing or writing "GVWP/applicant" to refer the alien to an immigration judge for an asylum hearing. The alien should be placed in INS custody pending the asylum hearing, or, if detention space is not available, the alien may be paroled. Asylum claimants under the GVWP are counted statistically as refusals in column D of the G-22.1 report, and should also be counted on line 121."

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### 15.9 Border Crossing Card (BCC) Admissions. (Revised 11/3/04; CBP 6-04)

(a) General. Until October 1, 2002, the term "border crossing card" was used to refer to several different documents.

Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (September 30, 1996) and subsequent amendments, [codified as amended at 8 USC 1101(a)(6) and 8 USC 1101 note] changed the definition of a border crossing card to require the inclusion of a machine readable biometric identifier on all border crossing identification cards and further required that any alien who presents a BCC for admission cannot cross the border unless the biometric identifier on the card matches the biometric characteristic of the alien. As of October 1, 2002, the DSP-150, Biometric Border Crossing Card is the only border crossing card that is valid for entry to the United States.

Until April 1998, a border crossing card issued on Form I-185 was available to Canadian citizens or British subjects residing in Canada. Such cards were commonly issued for the purpose of documenting approval of a waiver of inadmissibility. Form I-185 annotated with a section 212(d)(3)(B) waiver may still be accepted as evidence of a waiver of inadmissibility that is valid until revoked. Form I-185 is not a travel document and may not be accepted in lieu of a passport and visa for a resident of Canada who requires a visa.

(b) Admission Procedures. When a border crossing card is used for an admission requiring Form I-94, enter the card number in the remarks block on the back of the Form I-94.

(c) Card Issuance Procedures. Border Crossing Card issuance procedures are discussed in Chapter 21.5.

### 15.10 Entry of Nonimmigrant Workers during Labor Disputes.

(a) General. There are specific regulations governing the admission of nonimmigrant alien workers entering during strikes and lockouts involving their employers. In general, an alien who has not yet entered the U.S. under an approved I-129 petition or who has not yet entered as a D, E, or TN, is inadmissible once the Secretary of Labor has certified to the Attorney General that a strike is in progress. An alien who has already commenced employment may participate in a strike (if not engaging in unlawful conduct) without jeopardizing his or her status [Specific regulations governing admission of nonimmigrants during strikes are contained in relevant subsections of 8 CFR 214.2].

(b) Labor Disputes Involving NAFTA Nonimmigrants. Article 1603(2) of NAFTA establishes a safeguard for the domestic labor force in each NAFTA country. This provision permits each party to NAFTA to refuse issuance of an immigration document to a NAFTA business person whose temporary entry may affect adversely the settlement of any labor dispute in progress at the place or intended place of employment, or if temporary entry would affect adversely the

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employment of any person involved in such dispute. This provision may also be invoked with respect to a NAFTA business person seeking entry as a treaty trader, treaty investor, intracompany transferee, or professional, whose activities in the U.S. require an employment authorization. If a petition has already been approved, but the alien has not yet entered the U.S., or has entered the U.S. but not yet started employment, the approval of the petition may be revoked [See §214(j) of the Act, and 8 CFR 214.2(e), (l), and 214.6].

Only if the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress can adverse action (admission in a NAFTA category or approval of a petition) under this provision be initiated.

After the inspecting official determines if the temporary entry of the applicant may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such a dispute, the applicant must be advised in writing of the reason(s) for the refusal. This can be the routine INS notice of refusal at the port-of-entry.

In addition, written notification must be provided to the NAFTA country of which the business person is a citizen. The following steps should be taken at the port-of-entry or service center:

Notify Headquarters (HQBEN), Business and Trade Services Branch, in writing (fax to (202) 514-0197) of the refusal. Include the following information:

- Name and address, if known, of the business person;
- Citizenship of the business person;
- Date and place of refusal of document authorizing employment (I-94);
- Name and address of prospective employer;
- Position to be occupied;
- Requested duration of stay;
- Reasons for refusal;
- Reference specific statutory or regulatory authority for refusal (if applicable); and
- Statement indicating that the business person was informed in writing of the refusal and the reasons for the refusal.

Headquarters will notify the appropriate government officials whose citizen was refused an employment authorization document pursuant to this NAFTA provision.

Where a principal alien is refused classification under NAFTA, the dependent family members

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are not classifiable as dependents.

(c) Lawful Picketing. An alien residing in contiguous territory who is a member of an international union having membership on both sides of the border may be admitted to participate in peaceful, lawful picketing if such picketing is required to fulfil a union obligation.

### 15.11 Special Interest Aliens.

Special Interest aliens are processed in accordance with the National Security Entry Exit Registration System (NSEERS). The regulatory authority for the NSEERS program can be found at 8 CFR 264.1(f). NSEERS guidelines are set forth in Appendix 15-9.

### 15.12 Correction of Erroneous Admissions.

a) General. Authority exists in 8 CFR 101.2 to create a record of a previous admission where none exists or to correct an erroneous record, provided the error was not a result of deliberate deception or fraud on the part of the alien. Erroneous records include, but are not limited to:

- Misspelled name
- Incorrect or inverted date-of-birth (DOB)
- Visa classification reflecting the incorrect non-immigrant classification as noted on the non-immigrant visa, as well as, the classification the alien was admitted under.
- The B-2 visitors stay was limited without signed supervisory approval recording the visa expiration date instead of the petition expiration date as the authorized period of stay.

Jurisdiction for correcting such errors made at the ports-of-entry lies with Customs and Border Protection (CBP). Therefore, CBP locations are responsible for the review and issuance of the appropriate documents to correct the error, to include updating the Non-immigrant Information System (NIIS) as outlined below. Since mail-in procedures are not available, aliens will be allowed to report to the nearest CBP deferred inspection office or port-of-entry, regardless of where the actual document was issued. In many instances, the CBP location of the traveler's final destination where the discrepancy will be resolved may not be the port-of-entry of first arrival.

The procedure described below is not to be used to "correct" an entry without inspection or attempted entry without inspection of an alien at other than a port-of-entry.

(b) No Record of Admission Was Created. From time to time, you may encounter an alien who has not been properly inspected and admitted at a port-of-entry, through an oversight or error on the part of the government. In such a situation, conduct an

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inspection and determine the date, place and manner of arrival. Prepare a memorandum of facts for the Director, Field Operations (DFO) having jurisdiction over the port where the actual entry occurred. If there is no objection from that DFO based on a finding that the incident occurred through inadvertence and was not a deliberate act on the part of the alien to avoid inspection, complete the admission, including preparation of an Form I-94, as if it occurred in the normal manner. If you determine that a record of admission should not be created, institute proceedings to remove the alien. In the interest of efficiency, consultation with the originating DFO may be handled by facsimile or telephonically.

If the alien involved in such an incident is admitted as a new immigrant, follow the same procedures, processing the immigrant visa in the normal manner and attaching a copy of the memorandum of facts to the visa packet prior to forwarding the packet for card issuance.

If the alien involved is a lawful permanent resident, this procedure is required only if he or she is regarded as seeking admission within the meaning of section 101(a)(13)(C) of the Act.

(c) Where an Incorrect Admission Record Exists, Before completing such action, take the necessary steps to ensure that neither the original error nor the proposed correction are deliberate actions designed for fraudulent purposes. For example, a correction on a year of birth may be part of an attempt to qualify for social security benefits.

(1) Correcting nonimmigrant I-94 data: Prepare a replacement Form I-94, Departure Record by striking out the preprinted admission number [REDACTED]. In the space immediately below the preprinted admission number, copy the original admission number clearly using [REDACTED].

- Carefully print the original name and date of birth from the original Form I-94. NIIS matches arrival and departure records by comparing the admission number, together with the name and date of birth. This is why these values cannot change from the original Form I-94.
- Backdate an admission stamp to the original admission date. Affix the admission stamp in the appropriate location on the departure portion of the replacement Form I-94. Annotate the admission stamp with the corrected class of admission and / or the corrected date admitted to.
- The arrival portion of the Forms I-94 used to create the replacement Form I-94, departure record is to remain blank and discarded. The CBP officer with NIIS maintenance authority will update the NIIS record.
- Each DFO has established a NIIS Maintenance Unit(s) staffed by CBP officers

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authorized to update specific data fields in NIIS, to include but not limited to, name, date-of birth, admission class, and date admitted to. Refer to local policy to determine the location of the NIIS Maintenance Unit designated to process your NIIS data correction requests and the method for forwarding such requests.

1. CBP locations designated as a NIIS Maintenance Unit issuing corrected Forms I-94 must update the corresponding NIIS record within 72 hours of the issuance of the corrected Form I-94 or within 72 hours of the receipt of a request for a NIIS update from a CBP office not designated as a NIIS Maintenance Unit.
2. CBP locations issuing corrected Forms I-94 that are not designated as a NIIS Maintenance Unit must notify the designated NIIS Maintenance Unit of the correction within 24 hours of the issuance of the corrected Form I-94. The NIIS Maintenance Unit will update the corresponding NIIS record within 72 hours of receipt of the request.

(2) Correcting Form I-94 Information: To correct information beyond biographical and admission data, you must administratively "depart" the person from the original, erroneous admission to close out the erroneous record, and then "readmit" them, backdated to the original admission date, using correct information. This is required due to the NIIS system design.

(A) Process the initial departure record: To accomplish this, you must obtain the original departure portion of the Form I-94, and you must query NIIS to determine the original arrival information. Complete the departure portion of the original Form I-94 to reflect that the alien "departed" on the date you make the correction. The port code is your office code. In place of the carrier and flight or vessel information, enter "correction." Forward this departure Form I-94 for data entry with other Forms I-94 from your location.

(B) Record a new nonimmigrant admission: You must then record a new nonimmigrant admission to the NIIS containing all the corrected information. To record the correct information, issue an appropriate version of Form I-94 to the alien. Backdate the admission date to the original admission date. Ensure that all arrival and departure information on the new Form I-94 is complete, legible, and matches the information in the nonimmigrant's passport. Complete processing of the new Form I-94 arrival and departure portions according to Chapter 15.1.

### **15.13 Nationals of Former Trust Territories. (Revised by CBP 3-04)**

(a) General information. In 1986, an agreement between the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the United States became effective. The agreement was titled "Compact of Free Association". In 1994, a separate Compact became effective for the Republic of Palau. The Compacts are

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Public Laws 99-239 and 99-658 respectively. These states are referred to collectively as "the Compact states". In December 2003, Public Law 108-188 approved the Compacts of Free Association, as amended, between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands.

Implementation of the amended compact with the RMI was effective May 1, 2004. The United States and the FSM exchanged diplomatic notes on June 25, 2004, bringing into force the amended compact with that country. The compact with Palau is a separate compact and remains unaffected by P.L. 108-188.

These island nations were the Trust Territories of the United States prior to the enactment of the Compacts. A citizen of the Trust Territories was not required to have a nonimmigrant visa if coming directly from the Trust Territories to Guam or Hawaii or any other part of the United States. If a citizen of the Trust Territory came to the U.S. in any other manner, he or she was required to have a nonimmigrant visa. A nonimmigrant F-1 student from a Trust Territory was also granted economic necessity part-time employment routinely (i.e., upon request only) under a policy stated in the Operations Instructions. In all other respects a citizen of the Trust Territories was subject to the same treatment as any alien.

With the implementation of the Compacts of Free Association, and the Compacts, as amended, the visa requirements for an alien covered by the Compacts changed. Under the Compacts, he or she is admitted as a nonimmigrant and may establish residence and be employed in the United States without regard to sections 212(a)(5)(A) and 212(a)(7) of the Act. All the other grounds of inadmissibility and deportability apply.

In general, the provisions of the Compact with the Republic of Palau do not apply to a naturalized citizen of Palau until such naturalized citizen has resided in Palau for 5 years after naturalization. During the 5-year period, he or she is required to present a valid passport and nonimmigrant visa when applying for entry to the United States. Special provisions for the Republic of the Marshall Islands and the Federated States of Micronesia are discussed below.

An alien who was admitted before the implementation of the Compacts in 1986, and who was in the U.S. at the time of implementation, is to be granted a change of status when encountered. That alien should file Form I-102, Application for Replacement I-94, without fee, so that a new I-94 may be issued showing change of status to CFA/MIS or FSM or PAL as appropriate. Upon filing Form I-765, without fee, a citizen of Palau may also be granted work authorization. Both applications should be filed with the Nebraska Service Center, and may be filed concurrently. A citizen of the RMI or the FSM does not need to file Form I-765, as the alien's passport and Form I-94 showing status as CFA/MIS or FSM constitute employment authorization.

(b) Compact of Free Association with the Republic of the Marshall Islands. The

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United States concluded negotiations with the RMI to implement the amended compact, effective May 1, 2004. Pursuant to the Compact of Free Association between the United States and the RMI, as amended, any person in the following categories may be admitted to lawfully engage in employment and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to section 212(a)(5) (labor certification) or (7)(B)(i)(II) (nonimmigrant visa requirement) of the Immigration and Nationality Act (INA):

(1) A person who, on October 21, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the RMI;

(2) A person who acquires the citizenship of the RMI at birth, on or after the effective date of the Constitution of the RMI (May 1, 1979);

(3) An immediate relative of a person referred to in paragraphs (1) or (2), provided that:

(A) Such immediate relative is a naturalized citizen of the RMI who has been an actual resident there for not less than 5 years after attaining such naturalization and who holds a certificate of actual residence, and;

(B) In the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) for at least 5 years, and;

(C) The U.S. Government is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact.

(4) A naturalized citizen of the RMI who was an actual resident there for not less than 5 years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the RMI to the Government of the United States, provided, that the United States is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact (the attached list should be safeguarded from general public dissemination); or

(5) An immediate relative of a citizen of the RMI, regardless of the immediate relative's country of citizenship or period of residence in the RMI, if the citizen of the RMI is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

For purposes of the Compact, terms are defined as follows:

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- 'Residence' means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the INA, and variations of the term 'residence,' including 'resident' and 'reside,' shall be similarly construed;
- 'Actual residence' means physical presence in the RMI during 85 percent of the 5-year period of residency required by paragraphs (3) and (4) above;
- 'Certificate of actual residence' means a certificate issued to a naturalized citizen by the Government of the RMI stating that the citizen has complied with the actual residence requirement of paragraphs (3) or (4);
- 'Nonimmigrant' means an alien who is not an 'immigrant' as defined in section 101(a)(15) of the INA, and;
- 'Immediate relative' means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

Individuals qualifying under one of the above provisions must be in possession of a valid, unexpired passport but are exempt the nonimmigrant visa requirement. Upon inspection, these aliens are issued a Form I-94 with the classification CFA/MIS, without a period of admission. Although these aliens are admitted as nonimmigrants, there is no limitation on the period of time that such alien may reside in the United States.

No person who has been or is granted citizenship in the RMI, or has been or is issued a RMI passport pursuant to any investment, passport sale, or similar program is eligible for admission to the United States under the Compact, as amended. The rights of a bona fide naturalized citizen of the RMI to enter the United States, to lawfully work, and to reside as a nonimmigrant do not extend to any naturalized citizen who naturalized primarily to obtain such rights.

A person admitted to the United States under the Compact may accept employment in the United States. An unexpired RMI passport with unexpired documentation issued by the U.S. Government evidencing admission under the Compact is considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the INA.

The provisions of the INA apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where the INA does not apply) under the Compact, including:

- Any ground of inadmissibility or deportability (except sections 212(a)(5) and

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212(a)(7)(B)(i)(II) of the INA). In addition, an alien admitted under the Compact may be found deportable under section 237(a)(5) of the INA if the alien cannot show that he or she has sufficient means of support in the United States.

- The authority under section 214(a)(1) of the INA providing that admission as a nonimmigrant shall be for such time and under such conditions as may be by regulations prescribed (no regulations have yet been published);
- The requirement for establishing eligibility for employment under section 274A of the INA;
- The provisions of 8 CFR 214.7 regarding habitual residence; and
- The authority to administer and enforce the INA or other U.S. law.

Residence in the United States pursuant to the Compact does not confer on a citizen of the RMI the right to establish the residence necessary for naturalization, or to petition for benefits for alien relatives under the INA. This does not prevent a citizen of the RMI from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Any person who relinquishes, or otherwise loses his or her RMI citizenship, is ineligible to enter the United States under the provisions of the Compact. Such person may apply for admission to the United States in accordance with any other applicable laws of the United States relating to immigration of aliens from other countries.

#### **Adoption Under the RMI Compact**

A person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact, as amended. This applies to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This provision has no effect on the ability of the U.S. Government or any State of the United States or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

DHS has interpreted this provision to include individuals coming to the United States for the purpose of giving up a child for adoption (whether or not that child has yet been born), as well as children coming for the purpose of being adopted.

#### **RMI Compact and Service in Armed Forces of the United States**

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Any person entitled to travel to the United States under the provisions of the Compact is eligible to volunteer for service in the Armed Forces of the United States, but is not subject to involuntary induction into military service as long as he or she has resided in the United States less than one year. Time engaged in full-time study does not count towards this one year. An immediate relative of a citizen of the RMI, if not himself a citizen of the RMI, will be subject to the selective service laws.

The Compact provides that at any one time, at least one qualified student, nominated by the Government of the RMI, shall be enrolled in each of the United States Coast Guard Academy and the United States Merchant Marine Academy.

Furthermore, the provisions of the Compacts do not apply to a naturalized citizen of one of the Compact states until such naturalized citizen has resided in the Compact state for 5 years after naturalization. During the 5-year period he or she is required to present a valid passport and nonimmigrant visa when applying for entry to the United States.

With this exception, because a citizen of one of the Compact states is not subject to inadmissibility under section 212(a)(7) of the Act, he or she is not required to be in possession of a valid passport when applying for admission. However, he or she is required to establish Compact state citizenship and may do so through a number of means, including presentation of an expired passport issued by his or her Compact state, presentation of an expired or unexpired passport issued by the former Trust Territory authority, or presentation of any other documentation which establishes such citizenship. This is true regardless of the location where he or she embarked the aircraft or vessel on which he or she arrived.

### (c) Compact of Free Association with the Federated States of Micronesia.

The United States and the FSM exchanged diplomatic notes on June 25, 2004, bringing into force the amended compact with that country. Pursuant to the Compact of Free Association between the United States and the FSM, as amended, any person in the following categories may be admitted to lawfully engage in employment and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to section 212(a)(5) (labor certification) or (7)(B)(i)(II) (nonimmigrant visa requirement) of the Immigration and Nationality Act (INA):

- (1) A person who, on November 1, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the FSM;
- (2) A person who acquires the citizenship of the FSM at birth, on or after the effective date of the Constitution of the FSM (May 10, 1979);

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(3) An immediate relative of a person referred to in paragraphs (1) or (2), provided that:

- (a) Such immediate relative is a naturalized citizen of the FSM who has been an actual resident there for not less than 5 years after attaining such naturalization and who holds a certificate of actual residence, and
- (b) In the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) for at least 5 years, and;
- (c) The U.S. Government is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact.

(4) A naturalized citizen of the FSM who was an actual resident there for not less than 5 years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the FSM to the Government of the United States, provided, that the United States is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact (the attached list should be safeguarded from general public dissemination); or

(5) An immediate relative of a citizen of the FSM, regardless of the immediate relative's country of citizenship or period of residence in the FSM, if the citizen of the FSM is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

For purposes of the Compact, terms are defined as follows:

- "Residence" means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the INA, and variations of the term "residence," including "resident" and "reside," shall be similarly construed;
- "Actual residence" means physical presence in the FSM during 85 percent of the 5-year period of residency required by paragraphs (3) and (4) above;
- "Certificate of actual residence" means a certificate issued to a naturalized citizen by the Government of the FSM stating that the citizen has complied with the actual residence requirement of paragraphs (3) or (4);
- "Nonimmigrant" means an alien who is not an "immigrant" as defined in section 101(a)(15) of the INA;
- "Immediate relative" means a spouse, or unmarried son or unmarried daughter

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less than 21 years of age.

Individuals qualifying under one of the above provisions must be in possession of a valid, unexpired passport but are exempt the nonimmigrant visa requirement. Upon inspection, these aliens are issued a Form I-94 with the classification of "CFA/FSM", without a period of admission. Although these aliens are admitted as nonimmigrants, there is no limitation on the period of time that such aliens may reside in the United States.

No person who has been or is granted citizenship in the FSM, or has been or is issued a FSM passport pursuant to any investment, passport sale, or similar program is eligible for admission to the United States under the Compact, as amended. The rights of a bona fide naturalized citizen of the FSM to enter the United States, to lawfully work, and to reside as a nonimmigrant do not extend to any naturalized citizen who naturalized primarily to obtain such rights.

A person admitted to the United States under the Compact may accept employment in the United States. An unexpired FSM passport with unexpired documentation issued by the U.S. Government evidencing admission under the Compact is considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the INA.

The provisions of the INA apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where the INA does not apply) under the Compact, including:

- Any ground of inadmissibility or deportability (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of the INA). In addition, an alien admitted under the Compact may be found deportable under section 237(a)(5) of the INA if the alien cannot show that he or she has sufficient means of support in the United States.
- The authority under section 214(a)(1) of the INA providing that admission as a nonimmigrant shall be for such time and under such conditions as may be by regulations prescribed (no regulations have yet been published);
- The requirement for establishing eligibility for employment under section 274A of the INA;
- The provisions of 8 CFR 214.7 regarding habitual residence; and
- The authority to administer and enforce the INA or other U.S. law.

Residence in the United States pursuant to the Compact does not confer on a citizen of the FSM the right to establish the residence necessary for naturalization, or to petition for benefits for alien relatives under the INA. This does not prevent a citizen of the FSM from otherwise acquiring such rights or lawful permanent resident status in the United States.

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Any person who relinquishes, or otherwise loses his or her FSM citizenship, is ineligible to enter the United States under the provisions of the Compact. Such person may apply for admission to the United States in accordance with any other applicable laws of the United States relating to immigration of aliens from other countries.

### Adoption

A person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact, as amended. This applies to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This provision has no effect on the ability of the U.S. Government or any State of the United States or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

DHS has interpreted this provision to include individuals coming to the United States for the purpose of giving up a child for adoption (whether or not that child has yet been born), as well as children coming for the purpose of being adopted.

### Service in Armed Forces of the United States

Any person entitled to travel to the United States under the provisions of the Compact is eligible to volunteer for service in the Armed Forces of the United States, but is not subject to involuntary induction into military service as long as he or she has resided in the United States less than one year. Time engaged in full-time study does not count toward the year. An immediate relative of a citizen of the FSM, if not himself a citizen of the FSM, will be subject to the selective service laws.

The Compact provides that, at any one time, at least one qualified student, nominated by the Government of the FSM, shall be enrolled in each of the United States Coast Guard Academy and the United States Merchant Marine Academy.

(d) Geographic description. The Republic of the Marshall Islands is composed of 1,225 islands grouped in 29 atolls, 5 low islands, and 870 reefs. There are two principal chains: the Ralik Chain and Ratak Chain.

- The Ralik Chain islands are: Taongi, Bikar, Utirik, Taka, Mejit, Ailuk, Jemo, Likiep, Wotje, Erikub, Maloelap, Aur, Majuro (the capital), Arno, and Mili/Knox.
- The Ratak Chain islands are: Enewetak, Ujelang, Bikini, Rongerik, Rongelap,

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Ailinginae, Wotho, Ujae, Lae, Kwajalein, Lib, Namu, Jabwot, Ailinglaplap, Jaluit, Kili, Namorik, and Ebon.

- The Federated States of Micronesia is composed of all the Caroline Islands except for Palau (Belau). There are four states within the Federated States. The States with their islands are as follows:
  - State of Kosrae: Kosrae;
  - State of Pohnpei: Ant, Kapingamarangi, Mokil, Ngatik, Nukuoro, Oroluk, Pakin, Pingelap, and Pohnpei (the capital);
  - State of Chuuk (formerly Truk): Chuuk (Truk), East Fayu, Ettal, Kuop, Losap, Lukunor, Murilo, Nama, Namoluk, Namonuito, Nomwin, Pulap, Puluwat, Pulusuk, and Satawan; and
  - State of Yap: Eauripik, Elato, Fais, Faraulep, Garefut, Ifalik, lamotrek, Ngulu, Olimarao, Pikelot, Satawal, Sorol, Ulithi, West Fayu, Woleai, and Yap.
- The Republic of Palau (Belau) is composed of one island group and other isolated islands. The capital is Koror. There are nine inhabited islands. These are: Koror, Babeldaop, Peleliu, Angaur, Kayangel, Tobi, Pulo Anna, Sonsorol, and Helen Reef.

### 15.14 Hong Kong Travel Documents.

(a) General. On July 1, 1997, Hong Kong reverted to the control of the People's Republic of China. A separate administrative region, referred to as the Hong Kong Special Administrative Region (HKSAR) was established. Permanent residents of the HKSAR may carry various travel documents. Hong Kong residents may present one of several documents which meet the definition of passport under section 101(a)(30) of the Act, and are valid for visa-issuing purposes. British Dependent Territories Citizen passport (BDTC) ceased to be valid as of July 1, 1997, and is no longer be acceptable as a travel document. The following four documents are acceptable travel documents for Hong Kong residents:

(1) HKSAR passport. After July 1, 1997, permanent residents of Hong Kong who are ethnically Chinese can qualify for the new HKSAR passport. This document lists the bearer as a Chinese national with the right to abode in the HKSAR.

(2) British National(Overseas) [BN(O)] passport. This passport identifies the bearer's nationality as "British National (Overseas)." It is issued to permanent residents of Hong Kong whom British authorities consider British nationals without the right to abode in the

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United Kingdom. Although a British travel document, the BN(O) does not confer the same rights as a regular United Kingdom passport. For example, BN(O) bearers do not have the right to live in Great Britain nor are they eligible for the Visa Waiver Program (VWP).

(3) Hong Kong Certificate of Identity. This document has been issued to permanent residents of Hong Kong (of at least seven years) who were not born there, or who lack proof of birth in Hong Kong. These documents will not be issued or renewed after July 1, 1997, but will continue to be valid through their original ten-year validity. They will be replaced by the HKSAR passport.

(4) Hong Kong Document of Identity. This document has been and will continue to be issued to persons legally residing in Hong Kong for less than the seven years necessary to have full right of abode, and who cannot obtain a national passport. The document of identity is valid for return to Hong Kong at any time during its validity, even without an explicit re-entry visa into the HKSAR.

(b) Visas. Machine readable visas issued in the HKSAR, Hong Kong certificate of identity, or Hong Kong document of identity will have "HNK" in the nationality field. The BN(O) passport will have "HOKO" in the nationality field.

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### 15.15 Cancellation of nonimmigrant visas under section 222(g) of the Act. (Revised IN00-14)

(a) Section 222(g) Defined. An alien who was admitted to the United States on a nonimmigrant visa and who remained beyond the period of stay authorized by the Attorney General is subject to section 222(g) of the Act. The nonimmigrant visa becomes void at the conclusion of the authorized stay, unless the alien filed an application for extension of stay (E/S) or change of status (C/S) that would otherwise fall within the tolling provisions under section 212(a)(9)(B)(iv) of the Act or be deemed a period of stay authorized by the Attorney General. See paragraph (e) of this chapter. When the alien is subject to section 222(g) of the Act, the nonimmigrant visa becomes automatically void, and the alien may not be admitted to the United States, unless he or she obtains or has already obtained another visa in the country of his or her nationality. Consular officers and immigration officers who encounter aliens in possession of nonimmigrant visas that have become automatically void must physically cancel those visas. Aliens subject to section 222(g) may obtain a new visa in a third country only when the Department of State (DOS) finds extraordinary circumstances. Section 222(g)(2)(B) of the Act. Aliens arriving at a POE with a visa that has become automatically void under section 222(g) may apply for a waiver under section 212(d)(4) of the Act in limited circumstances. See paragraph (k) of this chapter. Aliens who present upon arrival at the POE a nonimmigrant visa that is automatically void under section 222(g), and who are not eligible for a waiver under section 212(d)(4) of the Act, are subject to expedited removal under section 235(b)(1) of the Act. In some cases, it may be appropriate to allow them to withdraw their application for admission, rather than to issue an expedited removal order. See paragraph (l) of this chapter and chapter 17.2.

(b) Effective date. Section 222(g) of the Act became effective on the date of enactment, September 30, 1996, and applies to any alien seeking admission on or after that date. The statute voids visas issued before, on, or after the date of enactment. For example, an alien who was issued a B-2 visa in 1994, valid indefinitely for multiple entries, who was admitted to the United States shortly thereafter for six months, and who remained in the United States beyond the I-94 expiration date is subject to section 222(g) if he or she seeks to be admitted with that visa on or after September 30, 1996. In addition, any future application for a nonimmigrant visa must be made in the country of the alien's nationality or last residence abroad, unless the alien is granted an exception under section 222(g)(2)(B) of the Act. We note that section 632(b)(2) of IIRIRA provides a limited exception in cases where the alien overstayed prior to September 30, 1996, was issued another nonimmigrant visa before that date, and has not, during any admission to the United States pursuant to that second visa, remained beyond the period of stay authorized by the Attorney General. The alien may continue using that visa, as appropriate; however, when that visa expires, any subsequent nonimmigrant visa applications must be made in the country of the alien's nationality or last residence abroad, unless an exception is granted under section 222(g)(2)(B) of the Act.

(c) General Applicability. Section 222(g) of the Act applies to aliens who were "... admitted on the basis of a nonimmigrant visa ... ." (Emphasis added.) Section 222(g) does not apply to:

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(1) Aliens not admitted on the basis of a nonimmigrant visa.

(A) Aliens who enter the United States without inspection;

(B) Aliens who remain in the United States beyond the period of parole authorization;

(C) Aliens who were admitted with an I-185 or I-586, Canadian or Mexican Border Crossing Card (BCC) and remain in the United States beyond the authorized period of admission. **(Note:** Aliens admitted with a combination B-1/B-2 NIV/BCC issued by DOS are subject to section 222(g) of the Act if they remain in the United States beyond the authorized admission, including those who were not issued a Form I-94. However, the overstay should be documented through a sworn statement or other credible evidence.)

(D) Aliens who are exempt from the nonimmigrant visa requirements under 8 CFR 212.1(c), (c-1), (c-2), (d), (e), (f), (i), and (j) and admitted without a nonimmigrant visa; or

(E) Aliens who remain in the United States beyond the period of admission authorized under the Visa Waiver Program (VWP) under section 217 of the Act, or under the Guam Visa Waiver Program under 8 CFR 212.1(e).

(2) Certain other aliens not subject to section 222(g).

(A) Aliens who were granted Temporary Protected Status (TPS) before their nonimmigrant stay expired; and

(B) Aliens who violated their status in some way other than remaining beyond the period of stay authorized by the Attorney General.

(d) Applicability to Foreign Government Officials and Representatives of International Organizations. DOS has determined that foreign government officials and representatives of international organizations applying for A-1, A-2, C-2, C-3, G-1, G-2, G-3, or G-4 visas or for visas under NATO-1 through NATO-6, to transact official business on behalf of the foreign government or international organization they represent, are not subject to section 222(g) of the Act. DOS based this determination on sections 102 and 212(d)(8) of the Act. See also 22 CFR 41.21(d). In addition, an alien who was previously admitted to the United States on a nonimmigrant visa until a date certain, who remained in the United States beyond the period authorized by the Attorney General, and who then applies in a third country for one of the nonimmigrant visas listed in this paragraph in his/her capacity as a foreign government official or a representative of an international organization, is not subject to section 222(g) of the Act.

(e) Meaning of Period of Stay Authorized by the Attorney General. (1) Single interpretation for sections 222(g) and 212(a)(9)(B) and (C) of the Act. In agreement and coordination with DOS, a single interpretation of "period of stay authorized by the Attorney General" shall be applied to sections 222(g) (relating to the automatic voidance of the alien's nonimmigrant visa) and

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212(a)(9)(B) and (C) of the Act (relating to unlawful presence). The basic underlying principle of the interpretation of "remain in the United States beyond the period of stay authorized by the Attorney General" that sections 212(a)(9)(B) and 222(g) have in common is that the alien was an overstay or was actually found to have violated his or her status, resulting in termination of the period of stay authorized by the Attorney General.

(2) Treatment of nonimmigrants. The treatment of nonimmigrants under section 212(a)(9)(B) and 222(g) of the Act depends on whether they were admitted until a specific date, or whether they were admitted for duration of status (D/S).

(A) Nonimmigrant Admitted until a Specific Date. Nonimmigrants who were admitted until a specific date are subject to section 222(g) when they remain in the United States after the date noted on their Form I-94. They are subject to section 222(g) before the I-94 expiration date only if there is a formal finding of a status violation resulting in termination of the alien's period of stay authorized by the Attorney General. The Service may make such a formal finding while adjudicating the alien's request for an immigration benefit, such as extension of stay (E/S), change of status (C/S), or reinstatement. The formal finding of a status violation resulting in the termination of the alien's period of stay authorized by the Attorney General may also be made by an immigration judge in the course of removal proceedings.

(B) Nonimmigrant Admitted D/S. Nonimmigrants who were admitted D/S are subject to section 222(g) only when there is a formal finding of a status violation by the Service or by an immigration judge, resulting in the termination of the period of stay authorized by the Attorney General.

(C) Nonimmigrant Whose E/S or C/S Application Is Approved *Nunc Pro Tunc*. Aliens who filed a late E/S application under 8 CFR 214.1(c)(4), or a late C/S application under 8 CFR 248.1(b) that was approved retroactive to the date the previously authorized stay expired are not subject to section 222(g).

(D) Date Certain Nonimmigrants with Timely Filed E/S and C/S Applications. Section 212(a)(9)(B)(ii) of the Act provides that an alien is unlawfully present if he or she is present in the United States without admission or parole or beyond the period of stay authorized by the Attorney General. Section 212(a)(9)(B)(iv) of the Act, however, is a tolling provision that covers certain nonimmigrants. Specifically, if the alien has timely filed a nonfrivolous application for E/S or C/S, the first 120 days of unlawful presence are not counted towards the 3-year bar under section 212(a)(9)(B)(i)(I) of the Act. The Service has designated as a period of stay authorized by the Attorney General the entire time during which a timely filed, non-frivolous application for E/S or C/S is pending, provided the alien meets the requirements set forth below:

- The E/S or C/S application must have been timely filed, as required under 8 CFR § 214.1(c)(4) or 8 CFR § 248.1(b), respectively. The application is timely filed if it is submitted before the previously authorized admission expires, as provided under 8 CFR § 214.2, as applicable to the nonimmigrant class under which the alien was

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admitted. This requirement may be established by submitting evidence of the date the previously authorized stay expired, together with a copy of a dated filing receipt, a canceled check payable to the Service for the E/S or C/S application, or other credible evidence of a timely filing.

- The E/S or C/S application must be nonfrivolous. The application must have an arguable basis in law or fact and must not have been filed for an improper purpose. When applying for a visa at a consular post abroad, the applicant may be required to satisfy additional criteria, as provided in section (g)(1) of this chapter; and
- The alien must not have worked without authorization before the E/S or C/S application was filed or while it was pending. Service and consular officers may take a sworn statement from the alien to this effect. Aliens who make misrepresentations to satisfy this requirement become subject to section 212(a)(6)(C)(i) of the Act relating to fraud and willful misrepresentation of a material fact.

Aliens who meet these requirements are not subject to section 222(g) . See also chapter 30.1(d) of the AFM.

(f) Aliens in Possession of More than One Nonimmigrant Visa. When an alien is in possession of more than one nonimmigrant visa, the nonimmigrant visa under which the alien was admitted and overstayed becomes automatically void and must be canceled. The alien may be readmitted to the United States only on a visa issued in his or her country of nationality, unless an extraordinary circumstances exception is granted under section 222(g)(2)(B) of the Act. While the other nonimmigrant visa does not become automatically void, it may not be used for admission if it was not issued in the alien's country of nationality. Therefore, if the other nonimmigrant visa was not issued in the country of the alien's nationality, it must also be canceled .

(g) Effect on 222(g) of Departure During Pending E/S or C/S Application.

(1) Aliens Admitted until a Specific Date. Nonimmigrants admitted to the United States until a specific date who apply for E/S or C/S but who then leave the United States after the I-94 expires and before a decision on the application has been issued are not subject to section 222(g) of the Act if they can establish, to the satisfaction of the consular officer (if applying for a nonimmigrant visa), or to the satisfaction of the inspecting officer (if applying for admission at a POE) that they were in a period of stay authorized by the Attorney General prior to departure. The application must be timely, non-frivolous, and the alien must not have engaged in unauthorized employment, as provided in chapter 15.15(e)(2)(D). When these requirements have been met, the alien's nonimmigrant visa should not be canceled.

(2) Aliens Admitted D/S. Nonimmigrants admitted D/S who leave the United States while the E/S or C/S application is pending are not subject to section 222(g) of the Act, if no status violation was found that would have resulted in the termination of the period of stay authorized by the Attorney General. In addition, D/S nonimmigrants whose C/S or E/S applications were denied for reasons other than a status violation are not subject to section

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222(g) of the Act.

(h) Effect of Voluntary Departure on section 222(g). An alien who has complied with an order of voluntary departure is not subject to section 222(g), if:

- There was no gap between the date the prior period of authorized stay lapsed and the date that voluntary departure was granted; and
- The voluntary departure was not issued in conjunction with the finding of a status violation.

(i) Cancellation of Automatically Voided Combination Nonimmigrant Visa/Border Crossing Cards. The combination B-1/B-2 NIV/BCCs, large format laminated cards issued by DOS consular officers, are subject to section 222(g) of the Act and become automatically void when the alien remains in the United States beyond the authorized admission date. Combination B-1/B-2 NIV/BCCs that have become automatically void under section 222(g) must be physically cancelled according to the instructions in Chapter 15.15(l). These documents must be distinguished from border crossing cards, DSP-150, as defined in section 101(a)(6) of the Act, which are not nonimmigrant visas per se, and do not become automatically void under section 222(g) of the Act when the alien remains in the United States beyond the period of stay authorized by the Attorney General.

(Revised 11/3/04; CBP 6-04)

(j) Extraordinary Circumstances Exceptions for Third-Country Nonimmigrant Visa Applicants Outside of the United States.

(1) Blanket Extraordinary Circumstances Exceptions. DOS will grant a "blanket" extraordinary circumstances exception under section 222(g)(2)(B) of the Act, if the alien meets certain pre-established requirements. DOS has determined that the following classes of aliens are eligible for the blanket extraordinary circumstances exception:

(A) [reserved]

(B) Aliens with a Residence in a Third Country. Aliens whose current foreign residence, as defined in 9 FAM 42.61, N.1, is in a country other than the country of their nationality, and who apply for a visa in that third country (the country of residence) after having remained in the United States beyond the period of stay authorized by the Attorney General are considered by DOS to qualify for a blanket extraordinary circumstances exception under section 222(g)(2)(B) of the Act in conjunction with their nonimmigrant visa application in that country.

(C) Foreign Medical Graduates. Certain foreign medical graduates (FMGs) who received a waiver of the 2-year foreign residence requirement under section 212(e) of the Act may seek the blanket exception under section 222(g)(2)(B) of the Act based on extraordinary circumstances. To qualify for the blanket exception, the waiver must have been based on a request by an interested U.S. Government agency or a State

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Department of Public Health. In addition, the FMG must be applying for an H-1B visa to fulfill the 3-year obligation to work in a medically underserved area, as required under section 214(l) of the Act. DOS has also determined that the FMG must have filed the H-1B petition with INS, or initiated the waiver request with the interested Federal agency or State Department of Public Health before his or her J-1 status expired (or in the case of a J-2 dependent applying for an H-4 visa, before the principal J-1's status expired). Because J-1 exchange visitors (and their dependents) are now routinely admitted D/S, they will not be subject to section 222(g) in any event, unless the Service or an immigration judge finds a status violation. This blanket DOS exception is, for all practical purposes, only of importance to those FMGs who were admitted until a specific date as opposed to D/S.

(2) Individual Exceptions. Aliens who are not eligible for the blanket 222(g)(2)(B) extraordinary circumstances exception may seek the exception on a case-by-case basis, and at the discretion of the consular officer.

(3) Action by DOS When Section 222(g)(2)(B) Exception Is Granted. When DOS issues a nonimmigrant visa to a third country applicant based on the extraordinary circumstances exception in section 222(g)(2)(B) of the Act (blanket or individual exception), the new visa is annotated "INA section 222(g) overcome under extraordinary circumstances." This means the consular officer determined that section 222(g) of the Act was overcome, and that the alien was allowed to apply for the NIV in a third country.

(4) Action by DOS When a Section 222(g)(2)(B) Exception Is Denied. When an alien subject to section 222(g) files a nonimmigrant visa application in a third country, and that application is denied, DOS will place a notation in the CLASS lookout system under code "222." The notation "222" means the applicant was instructed to obtain a visa at a consular office located in the country of his or her nationality.

(k) Cancellation of Automatically Voided Nonimmigrant Visas and section 212(d)(4) Waivers at the POE. When the inspecting officer encounters an alien whose nonimmigrant visa has become automatically void under section 222(g) of the Act, the visa must be physically canceled. The inspector should write or stamp the word "canceled" across the face of the visa and endorse the passport next to the canceled visa "Canceled pursuant to section 222(g) of the INA." After the nonimmigrant visa has been canceled according to these procedures, the inspecting officer may consider a waiver under section 212(d)(4)(A) of the Act according to the procedures described in section (d) of Chapter 17.5.

(l) Withdrawal of Application for Admission. Aliens who are inadmissible because their NIV has been canceled under section 222(g)(1) of the Act may be offered the opportunity to voluntarily withdraw their application for admission, unless there are other related underlying reasons for proceeding with expedited removal, such as long-term or repeated overstays, or other egregious immigration violations. See 8 CFR 235.4 and Chapter 17.2. When an alien is permitted to voluntarily withdraw his or her application for admission, the following steps should be taken:

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(1) Serve the alien with Form I-275, Withdrawal of Application/Consular Notification.

(2) Have the alien sign the form to acknowledge the request to voluntarily withdraw the application for admission. Because of the need to properly inform DOS of the cancellation and to effectively eliminate port- and consulate-shopping by those in violation of section 222(g) of the Act, do not substitute Form I-180, Notice of Voidance of Form I-186 or Denial of Form I-190, or any other form.

(3) When completing the I-275, write either "NIV/BCC" or the visa classification followed by the alien's alien registration number or visa number in the block for Visa number, type. In the Reasons block, include:

- A statement that the NIV or combination B-1/B-2 Nonimmigrant Visa and BCC was canceled in accordance with section 222(g) of the Act; and
- The specific evidence found to verify that the subject remained beyond the period of stay authorized by the Attorney General.

(m) Recording of Canceled Visas. Record each NIV or combination B-1/B-2 Nonimmigrant Visa and BCC canceled per section 222(g) of the Act in the Performance Analysis System (PAS) on line #49, Nonimmigrant Visas, G-22.1.

### **15.16 Student and Exchange Visitor (SEVIS) Processing. (Amended by CBP 4-04)**

(a) General: The Student and Exchange Visitor Information System (SEVIS) is an Internet/Intranet based system that enables schools and program sponsors to transmit electronic information and event notification to the Department of Homeland Security (DHS) and the Department of State (DOS) throughout a foreign student's or exchange visitor's stay in the United States. This automated system electronically captures, maintains, and monitors information relevant to each student, exchange visitor, and their dependents.

#### **1. Required SEVIS Users:**

- Any institution authorized by the DHS to enroll non-immigrant students.
- Any program sponsor designated by the DOS to participate in an exchange visitor program.
- Any agencies within DHS that process students and exchange visitors for benefit, entry, or violation purposes, to include but not limited to: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS).

2. Tracking Mechanism: SEVIS maintains an individual electronic record, referred to as the SEVIS ID number, for each foreign student, exchange visitor, and their dependents. A printed copy of the SEVIS-generated record is documented a:

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- SEVIS Form I-20AB, Certificate of Eligibility for Non-immigrant (F-1) Student Status – For Academic and Language Students.
- SEVIS Form I-20MN, Certificate of Eligibility for Nonimmigrant (M-1) Student Status – For Vocational Students.
- Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.

Each electronic SEVIS record includes a “real-time status” indicator that can be updated by a DSO, a USCIS adjudicator, or automatically by the system. However, the printed SEVIS Form only reflects the “Issuance Reason”, which may not indicate the status of the corresponding SEVIS record. The SEVIS record status does NOT appear on the printed SEVIS Form. Simply stated, the alien’s current SEVIS record status can be only determined by viewing the individual’s SEVIS record (Refer to the top right block on the information screen in SEVIS for record status.).

### 3. Chain of Events:

#### (i) To obtain a SEVIS-generated Form:

- A student must first apply to the institution(s) of his/her choice. The institution will enter all necessary data related to the student and his/her dependents, if applicable, in SEVIS. The institution will print and send a SEVIS Form I-20 to the student abroad; or,
- An exchange visitor must apply to participate in an exchange visitor program. If selected, the program sponsor will enter all the necessary data into SEVIS and issue the exchange visitor and his/her dependents if applicable; a SEVIS generated Form DS-2019.

#### (ii) Students and exchange visitors issued an initial SEVIS Form I-20 or SEVIS-generated DS-2019 respectively on or after September 1, 2004 are required to pay a SEVIS fee. Payment will be made prior to the issuance of the nonimmigrant visa. Upon payment, the individual will be issued a Form I-797, Receipt Notice or Internet Receipt Notice for presentation at the U.S. Consulate or U.S. Embassy, or at the port-of-entry (POE) when applying for admission, if visa exempt.

#### (iii) Foreign students and exchange visitors are required to present a valid SEVIS-generated Form appropriate to the desired visa classification when making an application for a nonimmigrant visa at a Consulate or Embassy abroad.

#### (iv) The U.S. Consulate or U.S. Embassy will verify visa classification and requirements. Information relevant to the visa issuance is sent to SEVIS via Nonimmigrant Visa (NIV) data-share. (Note: At this time, the NIV data does not always match with the nonimmigrant SEVIS record; therefore, it is not always available in the SEVIS record. DHS is continuing to work to resolve this issue). The appropriate NIV will be placed in the passport and the SEVIS Form will be returned to the individual.

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(v) The non-immigrant is to present the passport with the NIV and the SEVIS Form when making an application for admission at the port-of-entry (POE). If admissible at the time of entry, the CBP Officer records the entry into SEVIS:

- Land POEs have data entry access in the secondary inspection area, allowing for the admission to be recorded directly into SEVIS.
- Air and sea POEs have view only access to SEVIS. Admission is downloaded into SEVIS via an interface between Arrival Departure Information System and SEVIS within the Class of Admission (CAO) Screens.

(vi) If a student (F & M) or exchange visitor (J) travels outside of the United States, the POE can refer the individual to Secondary to confirm his/her status in SEVIS.

(vii) The institution is required to register a student (F& M) in SEVIS within 30 days of the program start date printed on the form. The program sponsor is required to validate an exchange visitor's participation in his/her program within 30 days of the program begin date identified in SEVIS.

(viii) If the individual does not report, the institution or program sponsor is to update the SEVIS record accordingly. This "flagged" record is forwarded to the ICE Compliance Enforcement Unit (ICE) for further research and possible action. Refer to "SEVI Hits" section E for specific details.

(b) Accessing SEVIS: Although SEVIS may be accessed through the Intranet or Internet, it is recommended that the POE use the Intranet. To access SEVIS through PowerPort:

- Click "Operation Center", then "Operational Systems".
- Click "SEVIS", the button is located at the bottom of the list.
- The Login page will appear, enter user name (the same as used for other systems).
- Click "login"; do not click "Register for New Account".
- Follow the directions provided at the change password request prompt. The password should not be less than 8 characters, but no more than 16.
- Once completed, click "Change password".
- Upon entry into the system, one of two screens will appear depending upon the type of access authorized. If INSLAND, the "Port-of-Entry Search Screen" will appear, If INS OFFICER (air/sea POEs) a generic "Welcome" screen will appear.

The "Port-of-Entry Search" or "Welcome" screen is the main screen used to gain access to or update the record of the enrolled student's, exchange visitor's and parts of the system: Port-of-Entry, Schools, Students, Programs, Exchange Visitors, Reports, Help, Tutorial, and Logout. Refer to the tutorial function for specific system instructions.

Land POEs that do not have Internet or Intranet access should make arrangements with a POE that does have access to SEVIS so the admission can be recorded in SEVIS. When inputting data, the code of the POE actually admitting the applicant should be recorded in "POE" data

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entry field.

(c) Searching SEVIS: The following tips should be used when searching SEVIS for records on a particular student, exchange visitor and their dependents when the SEVIS ID Number is not available:

### 1. Look in the correct place -- F, M, or J

- Search Schools/Students for F's and M's and Programs/Exchange Visitors for J's. Note: many schools have J programs for visiting scholars, etc.

### 2. "Active" verses. "Initial" status

- All new students and exchange visitors will be located under "Initial" status when applying for admission for the first time. The record does not become "Active" until the alien has reported to the institution or program sponsor.
- Generally, returning student and exchange visitor will be located under "Active" status.
- Terminated refer to Section d below.

### 3. Name or the Value of Wildcards

- When searching SEVIS for a particular record, it is recommended that a last name and first initial wildcard "asterisk" be used. Although this may result in several records, the possibility of identifying the correct record is greatest. If the full name is queried, but the DFO or Program Sponsor entered the individual's name into SEVIS slightly differently, the correct record will not be retrieved. This is especially troublesome when names are entered with spaces or hyphens or if the school or program sponsor entered the student's first and middle names and the POE searches for first name only.

### 4. Searching for J Exchange Visitors

- When searching SEVIS for a particular record, it is recommended that a last name and first initial wildcard "asterisk" be used.
- If a direct 'hit' is not retrieved when searching on name, search by date of birth (DOB) only to retrieve a list all exchange visitors with that DOB. If there are too many results, narrow this search by adding country of birth.
- Unusual last names may be searched by last name only to provide a list of all exchange visitors with that last name. However, searching by very common names alone will provide a long list of possible candidates.

### 5. Searching for F and M Students

- It is easier and more reliable to search for the student by first locating the school and then searching for the student within the school listing. Ask the individual for the name of the school, the state where it is located, and the school program code.
- Searching by name is least reliable since schools often enter names differently –

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beware of spaces, hyphens, and misspellings.

### 6. Searching for Dependents.

- It is **only** possible to search for the F-2 or M-2 dependents of F-1 or M-1 students by searching for the principle student and then opening his or her record. Dependents will be located at the bottom of the page. Click on the dependent's SEVIS ID record.
- J-2 dependents can be searched in SEVIS directly. In the Exchange Visitor Search screen, go to "search by", and then click "dependent". Type the J-2's SEVIS ID number or the appropriate personal information in the blocks; then follow the instructions provided.

(d) SEVI HITS. SEVIS contains a mechanism to allow ICE to record confirmed status violators into NAILS. Due to the vetting process, there is a lapse between the time the violation is recorded in SEVIS and when it appears in NAILS. In the meantime, the properly documented alien may apply for admission at the POE and maybe admitted, regardless of the terminated status reflected in the SEVIS record. In order to prevent such an admission, the DHS implementation of a work-around solution in which viable leads on all terminated students be entered into NAILS as lookouts. This occurs when the violation is first recorded into SEVIS and prior to being vetted by the ICE Compliance Enforcement Unit (CEU). The CEU follows the established vetting process and removes cases from NAILS as necessary.

1. General. A record in "Terminated" status indicates that, according to the information in the system, a student has ceased to participate in the associated program and/or ceased to maintain her/his F or M status. Always review the "Termination Reason" to determine whether or not the individual is actually being reported as "Out of Status". It may also be advisable to check SEVIS for another, more recently created student record. This will require searching by name and date of birth, rather than solely by the SEVIS ID number. In cases where SEVIS automatically terminates a record, the "Remarks" field will indicate "System Termination", rather than "Manual Termination". Whenever a DSO or an automatic system function terminates a SEVIS record, a "Termination Reason" must be included. The "Termination Reason" will appear just below the status indicator of "Terminated" on the student information screen in SEVIS.

It is possible for a subject of a "Terminated" record to be in possession of a valid immigrant visa (NIV) and SEVIS Form at the time of application for admission. The creator of the "Terminated" record (DSO, Program Sponsor or automatic system indicator) does not have the authority to cancel the NIV. In most instances, the subject will retain the SEVIS Form, which is valid for one year for academic students (F-1) and six-months for vocational (M-1) students. For this reason, it is important to review the dates of the SEVIS records to determine if the individual was able resolve the reason for termination, as discussed below.

It will always be necessary to do further research on a case prior to determining whether or not the SEVIS record termination is an accurate indication of the nonimmigrant's current status and admissibility. In some instances, a previous violator may be able to establish

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admissibility. An individual that has a new SEVIS record in "initial" or "continuing" status that was created subsequent to the terminated record can be admitted, despite an old terminated record. As indicated in the "SEVI" text, dispositions are to be sent to the ICE Headquarters Compliance Unit via Email at ALRCEU@DHS.GOV, or otherwise noted.

### 2. Reasons for "Terminated" Record:

(i) Reporting Violations: The student did not report to the school or remain in the program as required.

- No Show - Manual Termination. DSO indicates the new/initial entry student entered the United States, and was expected to report to the school but failed to do so.
- No Show - System Termination. Records indicated the student was admitted to the United States to attend the school of record and failed to do so.
- Failure to Enroll. A continuing student was expected to report at the next term or session, and failed to do so.
- Transfer Student No Show. Student transferred out of one school, and did not arrive at the other school when expected.
- Unauthorized Withdrawal. Student ceased to participate in (e.g. has withdrawn from) the program at that school of record without notifying a DSO, and to the school's knowledge, has not transferred to another school. If student has in fact ceased going to an approved school, he/she should have left the U.S. as he/she is no longer maintaining F or M nonimmigrant status and is no longer eligible to stay in U.S. in that status.

(ii) Status Violations: A student who has fallen out of status.

- Authorized Below Full Course Time Exceeded. The student did not resume a full course load when required to (and after being authorized to take less than a full course for a specified period of time).
- Unauthorized Drop Below Full Course of Study. The DSO has found the student to be taking less than a full course of study without prior DSO approval. As students are required to be full-time participants, unless explicitly authorized by a DSO to take less than full course due to certain allowable circumstances, students that take less than a full course load without DSO approval are considered to be out of status.
- Expulsion. The student is not able to maintain status in program because of expulsion from school.
- Suspension. The student was not able to maintain status in program because of suspension from school.
- Otherwise Failing to Maintain Status. Used by the DSO for terminating record for any reason not otherwise contained in list. Remarks should be included and should provide further detail on reason for record termination.

To overcome the violation within the U.S., a student is required to obtain authorization from the school and file a Form I-539, Application to Extend/Change Nonimmigrant Status for re-instatement with USCIS. At this point, the SEVIS record will reflect

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"Reinstatement Pending" or "Pending". However, if the student departs the United States prior to a decision from USCIS, the application becomes void. Upon re-entry, the individual is required to present a new SEVIS Form I-20 indicating "Initial or "Continuing" status with a new SEVIS ID number. If the student presents the SEVIS Form I-20 indicating "Re-instatement" or the SEVIS record reflects "Reinstatement Pending", the POE may consider issuing a Form I-515A, Notice to Student or Exchange Visitor, if otherwise admissible.

(iii) Change of Status (COS): The student has filed an application

- Change of Nonimmigrant Classification/ Change of Status Approved. Nonimmigrant that was in student status and was approved for a change of classification to another nonimmigrant status, or to Lawful Permanent Resident (LPR). This termination code generally indicates that, while the student is not maintaining the F, M or J status as originally granted, they are in another nonimmigrant status, or are applying for immigrant status. May require a new non-immigrant visa or immigrant visa upon re-entry.
- Violation of Change of Status Requirements. Indicates B-1/2 or F-2 nonimmigrant that had been pending COS to student status started the program in advance of USCIS approval. May require new nonimmigrant visa and supporting documentation upon readmission.

(iv) Extension/Transfer Request:

- Denied Transfer. M-1 student that applied to USCIS for transfer, began transfer-in program while awaiting adjudication, and was ultimately denied transfer request.
- Extension Denied. M-1 student applied to USCIS for extension, continued in program past original program end date while awaiting adjudication, and was subsequently denied extension request.

(v). Other:

- Death. Validate identity of non-immigrant.
- Unauthorized Employment. The DSO determined that the student was engaging in employment that was not authorized under their F or M status, thus rendering the alien out of that nonimmigrant status.

(e) Students Lacking Required SEVIS Documentation: Current regulations require that a nonimmigrant student present a SEVIS Form I-20 issued in his/her own name by a DHS approved school as per 8CFR 214.2(f)(1)(i). If the individual is not in possession of a SEVIS Form I-20, but presents evidence of student status (i.e. F-1/M-1 visa possibly noting a SEVIS ID number) the POE should query the individual's record in SEVIS.

1. School and Student registered in SEVIS, Student does not have SEVIS Form: If the school is DHS approved and the SEVIS status of the student indicates:

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(i) "Active" or "Initial". The student is in compliance with the program. Issue a Form I-515A, Notice to Student or Exchange Visitor according to guidelines in Section f.

(ii) "Terminated" Status. Schools are required to terminate a student record in SEVIS for a number of reasons, including when a student enters the United States to attend school and the student fails to register within 30 days of the program start date.

- A SEVIS record status of "terminated" implies that the student is no longer engaged in the program for which the SEVIS I-20 was issued, and the student may be out of status. For specific information concerning the reasons for terminated records, refer to Section d.
- Always review the "terminated reason" to determine whether or not the individual is out of status.
- A record terminated for "failure to enroll, no show or suspension" indicated that the individual does not qualify for the F-1 admission with that record. A Form I-515A must not be issued, nor may the inspection be deferred.
- It is advisable to check SEVIS for another, more recently created student record.

(iii) "Deactivated" Status. The SEVIS record has been transferred and the student has transferred to another school within the United States. Query SEVIS under the student's name for an additional SEVIS record under the same SEVIS ID Number to verify status. Presently, there is no requirement for the student to attend a school for a specific period of time prior to transferring to different school.

(iv) "Completed" Status. The student has graduated or completed his or her course of student and has departed or will depart the United States in the near future.

The "Remarks" section provides the DFO with the capability to record information that may not otherwise be reflected in the student's record. In addition, the "Request/Authorization Details" link on the far left of the SEVIS screen provides information regarding the student's specific benefit authorizations.

Students engaged in post-completion Optional Practical Training (OPT) will most likely have an expired "program end date" on their SEVIS Form I-20. Page three of the SEVIS Form I-20 should have a DSO signature and information at the top of the form indicating either pending or approved OPT, with employment start and end dates. The associated SEVIS record status should be "active".

There have been instances when a student has completed the program and is now participating in OPT, but the SEVIS record incorrectly reflects "Completed". Under these circumstances, the individual is still in F-1 status and requires a SEVIS Form I-20. A Form I-515A should be issued if the individual is otherwise admissible, refer to Section f.

2. School registered in SEVIS, but student is not. If the school is DHS approved, but the student is not in SEVIS, the POE must confirm student status with the school prior to admission. Trends indicate that a student presenting an older nonimmigrant visa and a

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non-SEVIS Form I-20 is returning to an illegal residence.

3. School not in SEVIS. If the school is not identified in SEVIS as DHS approved, refer to the SEVIS website at <http://www.ice.gov/graphics/enforce/imm/sevis/index.htm> for a listing of all of the approved and pending Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Students. If the record indicates that the application is pending, contact the SEVIS Program Office at (202) 305-2346 to determine the status of the case and establish a realistic date of completion, if possible. If the application has been denied or may be denied, the individual is not to be admitted to the United States. Withdrawal of application of admission should be considered in lieu of Expedited Removal in cases where no fraud or other serious violation has occurred. If the SEVIS Program Office is not available, the inspection may be deferred.

The inspection is not to be deferred if the school has not yet filed a Form I-17 to participate in the SEVIS Program.

(f) Form I-515A Processing. The SEVIS Program Office in Washington, D.C. maintains a Form I-515A Unit established to process the Forms I-515A issued to students, exchange visitors, and their dependents not in possession of the required SEVIS documentation at the time of admission at the POE. Centralizing the submission of the Forms I-515A allows the SEVIS Program Office to standardize the adjudication process, which is beneficial to identifying trends and monitoring compliance. POEs are to issue the Form I-515A in the following manner:

- Admit the applicant for 30 days so the required documentation can be obtained from the school or program sponsor and submitted to the address printed on the form.
- Provide **all** of the information requested in the blocks located on the upper portion of the Form I-515A. It is very important to provide the SEVIS ID number and the admission number.
- Officers are to properly endorse the admission stamp block prior to the applicant's release from the inspection area.
- Identify the reason for issuing the Form I-515A in the blocks provided.
- Note the reverse of the Form I-94 both sections with "I-515A".
- Use the admission number printed on the Form I-94. The pre-printed admission number is not to be crossed out and replaced with any previous admission numbers.
- Staple the departure portion of the Form I-94 to the upper right corner of the Form I-515A and give it to the applicant. When issuing a Form I-515A, do not staple the Form I-94 to the passport.
- Complete the IBIS secondary screen indicating the issuance of the Form I-515A.
- It is not necessary to send the SEVIS Program Office, Federal Record Center, data entry contractor or any other program office a copy of the Form I-515A issued.

When issuing a Form I-515A to an individual who frequently crosses the border and would be reapplying for admission within the 30-day timeframe, the POE may advise the individual to provide the required SEVIS Form upon readmission, when available. Under these circumstances, the POE may replace the pre-printed submission address with the POE address. The Form I-94 is valid for multiple entries within the 30-day timeframe.

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### Chapter 16: Special Classes

- 16.1 Parole
- 16.2 Refugee Admissions
- 16.3 Asylees and Asylum Applicants
- 16.4 Temporary Protected Status (TPS) Cases

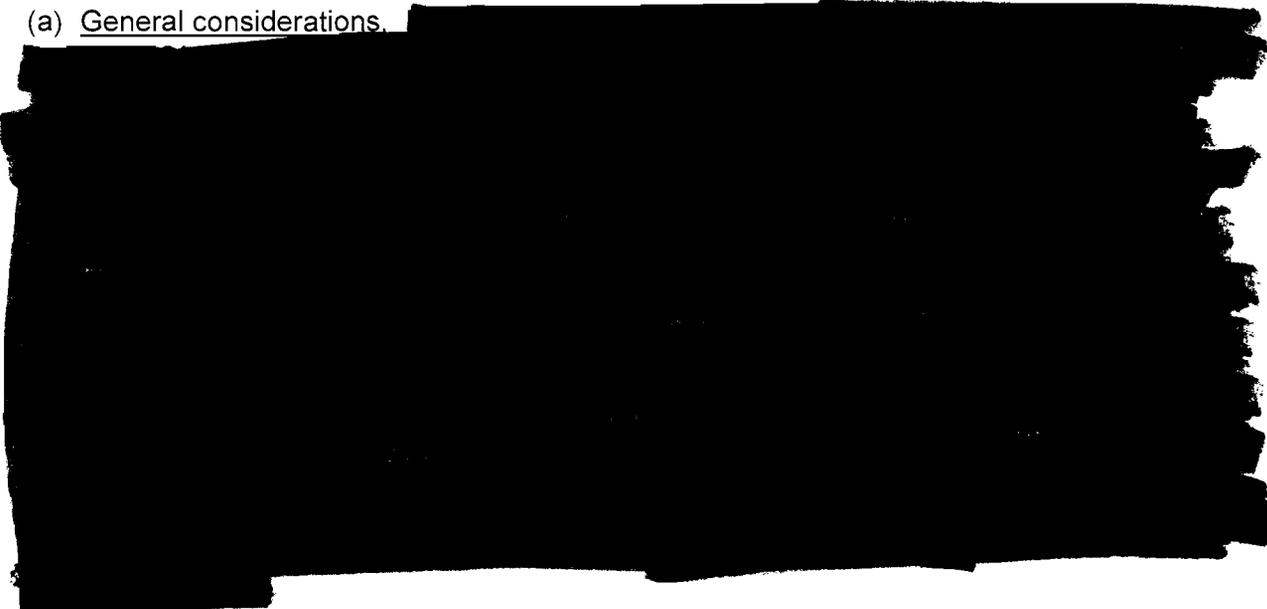
#### References:

INA: Sections 207, 208, 209, 212, 244.

Regulations: 8 CFR 207, 208, 209, 212, 223, 244.

#### 16.1 Parole.

(a) General considerations.



(b) Processing advance paroles.



The form itself also includes the alien's biographic data, a glued on or computer imaged ADIT-style photograph, and the facsimile stamp of the district director for the issuing district.



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are commonly referred to as "transportation letters" or "boarding letters" since they are addressed to the transportation line and absolve the line of liability for the fine ordinarily incurred when a carrier transports an alien without a required visa.

Ordinarily, processing of paroles is handled in secondary, where there is time to access automated systems to verify the request. When you encounter an I-512 or boarding letter during the inspection process, examine it closely. Counterfeit and altered forms have been encountered. Question the applicant concerning the basis of their parole, to determine if his or her explanation and the basis on which the parole was issued are consistent. For example, an alien who has not previously been in the U.S. should not have a parole document indicating a pending adjustment or asylum application as the basis of issuance.

Once you are satisfied that the person is entitled to parole, endorse the I-94 with the parole stamp, indicate in the appropriate block the basis of parole (e.g. "I-512, adjustment applicant"), the date to which paroled (or indefinite), the date of action, port and your stamp number. Similarly endorse the action block on the I-512 and the alien's passport. If the I-512 is valid for a single entry, collect it and forward it to the files control office where the advance parole was issued. If the I-512 is valid for multiple entries, return it to the applicant, after making a photocopy for forwarding to the issuing office. If the alien parolee is permitted employment and does not have an employment authorization document advise the applicant about filing procedures. Special handling procedures described in Chapter 15.11 also apply to holders of Forms I-512 who are nationals of the affected countries. Handle the I-94 arrival and departure sections in the same manner as other nonimmigrant Forms I-94.

### (c) Port-of-Entry paroles.

(1) General. Section 212(d)(5) of the Immigration and Naturalization Act (Act) provides the Attorney General with the discretion to "parole into the United States temporarily under such condition as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit...". Whether to grant a parole request is a matter of agency discretion. Thus, no alien has a right to a grant of parole. This guidance is not intended to create, and does not create, a class of aliens who are guaranteed parole based on their meeting certain criteria, nor does it relieve the INS from making a case-by-case determination on each request for parole at the port-of-entry.

Pursuant to 8 CFR 103.7(b), the established fee for a request for authorization for parole of an alien into the United States is \$65.00. Currently, there is no approved form for public use available for an alien to request parole at the port-of-entry or an automated system to track such requests; therefore, an application is not required. Form I-131, Application for Travel Document, is used to apply for advance parole and is not appropriate for port-of-entry paroles. Instead, parole actions are documented on an Arrival/Departure Record, Form I-94, endorsed with the parole stamp. Preparation of a Form I-94 is not required for paroles of less than one day for certain border functions or certain NATO activities as described in Chapter 11.2. In addition, for all paroles initiated at the port-of-entry, prepare Form I-160, which is retained at the port-of-entry as a record of the action taken. Specific codes (discussed below) are assigned to categorize and track the

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basis of parole in the Non-Immigrant Information System (NIIS). The data is later used for statistical analysis and reporting purposes.

(2) Guidelines for Fee Waiver. The regulations do not specify the situations in which the requirement to pay the filing fees applies. This chapter establishes guidelines for determining when the regulation applies. Note the INS regulations also permit a director to waive a filing fee, if the applicant establishes that he or she cannot pay the fee. 8 CFR 103.7(c). There are other situations in which the INS should not collect a filing fee from an alien seeking parole at a port-of-entry.

(A) When a fee waiver is appropriate. The INS may charge a user fee only for actions that benefit the applicant. 31 U.S.C. 9701. If the INS decides to parole an alien because doing so is of "significant public benefit," then the INS may not properly charge a fee. Situations resulting from an action at the port-of-entry in which it would not be appropriate to charge a fee include those in which the INS paroles the alien:

- For criminal prosecution\*
- For incarceration after conviction for a crime\*
- Into the custody of another agency\*
- For section 240 removal proceedings, if detention is not appropriate or feasible
- As a TWOV applicant technically ineligible for that classification or not a bona-fide transit passenger
- As a stowaway removed from an aircraft/vessel to obtain documentation for eventual repatriation
- To permit the alien to serve as a witness in a judicial, administrative or legislative proceeding being conducted, or to be conducted in the United States\*
- For deferred inspection
- For deportation from another country through the United States

\* In some instances, requests for Significant Public Benefit Parole are authorized by HQIAO, Parole Branch, in advance of the alien's arrival at the port in accordance with the Significant Public Benefit Parole Protocol. [Refer to the Significant Public Benefit Parole memorandum dated July 24, 1998 for Significant Public Benefit Parole Protocol guidelines.]

Humanitarian parole is chiefly of benefit to the alien. Generally, the INS should collect the fee for requests for humanitarian parole. However, even if the applicant cannot qualify for a fee waiver under 8 CFR 103.7(c), the INS generally should not collect a fee if the alien requests parole because of exceptional circumstances such as, but not limited to:

- Inadmissible alien in need of emergency medical treatment
- Emergency worker responding to a natural disaster
- Medi-vac (land and air ambulance) case
- Minor child accompanying a detained parent

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- Sick or injured crewmember and shipwreck or plane crash survivor
- Unaccompanied minor placed in custody of social service agency
- Spouse or legal guardian of an alien child described above accompanying or following to join the paroled child

(B) When fee waiver is not appropriate. The port-of-entry should **NOT** grant a fee waiver request, as a general rule, when the officer is satisfied that paroling the alien into the United States is to the benefit of the alien, unless, in accordance with 8 CFR 103.7(c), the alien establishes that he or she cannot pay the fee. The following situations are examples of circumstances in which an alien who can pay the fee should be required to do so:

- Parole granted to permit crew to conduct ship's business (limited essential personnel, usually the captain and the first mate, are paroled to maintain normal operations necessary to conduct foreign commerce). or for medical treatment according to 8 CFR 253.1. Collect a fee for each paroled crewmember (Refer to Parole of Alien Crewmembers, Chapter 23.12)
- Alien seeking prescheduled, non-emergency medical treatment
- Crewman pursuing workman's compensation claim against shipping company
- Any humanitarian parole, except in an emergency as described above

In any case where an alien passenger arriving by air or sea is paroled because he or she lacks the proper visa or other required documents, determine whether fine proceedings against the carrier are appropriate, as described in Chapter 43. Initiate fine proceedings when applicable.

(3) Parole codes. Parole of an alien into the United States must be documented on a Form I-94, endorsed with the parole stamp. Specific codes have been assigned to categorize and track the justification for parole in NIIS. The codes provided are limited to the type of paroles referenced in this chapter. Refer to the Statistics Handbook in INSERTS for the complete listing of statistical codes assigned to classes of admission and paroles. Indicate in the block provided on the parole stamp, the appropriate code and basis for parole:

-  [Urgent] Humanitarian Parole (Advance Authorization): Authorized at INS headquarters [HQIAO Parole Branch or overseas district offices] for "urgent humanitarian reasons" specified in the law. It is used in case of medical emergency and comparable situations.
-  Significant Public Benefit Parole (Formally Public Interest Parole): Authorized at INS Headquarters for "significant public benefit." It is generally used for aliens who enter to take part in legal proceedings.
-  Advance Parole: Authorized at the INS district office or service center [or INS

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Headquarters for applicants in proceedings] in advance of the alien's arrival; may be issued to aliens residing in the United States in other than lawful permanent resident status who have an unexpected need to travel and return, and whose conditions of stay do not otherwise allow for readmission to the United States if they depart.

Port-of-Entry Parole: Authorized at the port upon alien's arrival; applies to a wide variety of situations and is used at the discretion of the supervisory immigration inspector, usually to allow short periods of entry. Examples include allowing aliens who could not be issued the necessary documentation within the required time period, or who were otherwise inadmissible, to attend a funeral and permitting entry of emergency workers such as fire fighters, to assist with an emergency.

Deferred Inspection: Authorized at the port upon the alien's arrival; may be conferred by an immigration inspector when the alien appears at a port-of-entry with documentation, but after preliminary examination, some question remains about his/her admissibility which can best be answered at his/her point of destination.

Overseas Parole: Authorized at an INS district or sub-office while the alien is still overseas; designed to constitute long-term admission to the United States. In recent years, most of the aliens the INS has processed through overseas parole have arrived under special legislation or international migration agreements.

(4) Period of parole. The duration of parole should be until the date required to complete the purpose of entry, not to exceed one year from the date the parole was granted at the port-of-entry. Include the date of the action, port code and officer's stamp number. Parole does not constitute a formal admission to the United States and confers only temporary permission to be present in the United States without having been admitted. A parolee is deemed to be still "at the port-of-entry" throughout the period of parole, and must leave when the parole period ends or when the INS terminates the parole.

(5) When parole should not be considered. The port-of-entry should **NOT** grant a request for parole, as a general rule, when the alien requesting parole into the United States is:

- An arriving alien applying for parole for the primary purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization and has not filed an Application for an Immigrant Visa and Alien Registration, Form OF-0230, or an Application to Register Permanent Residence or Adjust Status, Form I-485, and Application for Travel Document, Form I-131. The alien should be denied parole and detained for removal under section 235(b)(1) of the Act or permitted to voluntarily withdraw his/her application for admission.
- Crewmember who is not in possession of a valid, unexpired B-1/B-2 visa requesting to attend regularly scheduled training related to his/her crew

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duties.

- Crewmember aboard a cable-laying vessel, who in the normal course of his/her duties does not intend to depart the United States within 29 days.

It is important to remember that nothing in this chapter limits the discretion of the district director to waive fees when an alien's presence is otherwise in the interest of the U.S. Government. If the district director finds that the parole serves the interest of the U.S. Government, no fee should be collected. The authority to waive fees is contained in 8 CFR 103.7(c). Directors must ensure that the determination not to require the fee, regardless of ability to pay, is made on a consistent, equitable basis.

(d) Parole of crewmembers. Policies and procedures for parole of alien crewmembers are discussed in Chapter 23.12

(e) Parole for deferred inspection. Procedures for parole of aliens whose inspection is deferred are discussed in Chapter 17.1

(f) Special Interest paroles. [Reserved]

(g) Significant Public Benefit Paroles (SPBP). In order to ensure consistency in decisions regarding significant public benefit parole pursuant to section 212(d)(5)(A) of the Act for witnesses or informants and to track and monitor these aliens, DHS has established two separate protocols for these classes of paroles, signed by CBP Commissioner Robert C. Bonner and ICE Assistant Secretary Michael Garcia. [See Appendix 16-2]. One protocol covers components of DHS, including both Border Patrol and Office of Field Operations in CBP, and ICE. The other covers other Federal, state, and local law enforcement agencies (LEAs), such as the Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI). These two protocols supersede any previous SPBP policies for both CBP and ICE.

In most cases, the DHS protocol will primarily involve ICE and Border Patrol investigations. Although relatively rare, there may be instances where CBP Enforcement Officers may be involved in an alien smuggling case or other investigation, and may wish to bring in informants or witnesses to assist in the case; the parole approval procedures in the protocol should be followed in those cases.

The protocols contained in Appendix 16-2 delineate responsibilities and contain detailed procedures for processing SPBP cases. Because both CBP and ICE have been delegated parole authority from DHS, the protocol for DHS components permits approval of the SPBP by designated officials within CBP and ICE, using the DHS SPBP authorization forms and checklists developed for this purpose and included in Appendix 16-2. Notification is then to be provided to the ICE Parole and Humanitarian Assistance Branch (PHAB) for vetting and tracking purposes. The PHAB maintains the Parole Case Tracking System, a database of all alien informants and certain witnesses brought to the United States. This database is designed to record the submission and disposition of all law enforcement parole requests and monitor the arrival of the parolee, the periodic requirements of the LEAs, and departure of the parolee from

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the United States. Other Federal LEAs must continue to forward original and re-parole SPBP requests to the PHAB. State and local LEAs will submit requests to the PHAB through the appropriate ICE Special Agent in Charge (SAC) or Border Patrol Chief Patrol Agent (CPA). Any Federal LEA (including U.S. Attorneys offices) that requests parole of informants, witnesses, and certain defendants, should be referred to the PHAB.

Ports of entry will be notified of the advance parole authorization either via memorandum from the PHAB or by presentation of a Form I-512 by the alien, and will normally honor the advance authorization. If additional derogatory information arises during the inspection that may not have been considered during the advance authorization approval, the CBP Officer may elevate the issue through channels for consideration and resolution. Every attempt should be made to resolve possible differences at the lowest level.

The advance parole authorization may be for multiple paroles, however, regulations provide that parole automatically terminates upon departure from the United States. Consequently, aliens eligible for SPBP under these protocols must be re-paroled upon each application for admission.

The parole stamp should be endorsed with the parole code "CP". Although CBP Officers will execute the parole authorization at the port of entry by issuing a Form I-94 with the parole stamp, it is the responsibility of the authorizing (requesting) office to supervise and monitor the whereabouts and departure of the parolee. Therefore, most monitoring responsibilities will fall to the ICE, Border Patrol, or LEA case officers. Paroles of aliens already in the United States who are deemed applicants for admission (i.e., not inspected and admitted), referred to as parole in place, or re-paroles (extensions), may be granted by either CBP or ICE authorizing officials, depending on which agency has jurisdiction or responsibility for the alien at the time.

The protocols do not apply to paroles authorized on the basis of the significant public benefit provisions of section 212(d)(5)(A) by port of entry officials for cases initiated at the port of entry and arising out of port of entry activities, such as parole for criminal prosecution of aliens presenting fraudulent documents in the course of an inspection, parole for criminal prosecution for drug offenses discovered during inspection, parole for section 240 proceedings if detention is not available or appropriate, and similar situations.

Designated CBP/OFO port officials also have parole authority over aliens arriving at the port of entry without prior parole approval as a result of emerging enforcement actions, such as controlled deliveries, cold convoys, or silent paroles. ICE and CBP officials should coordinate as much in advance as possible to ensure that legitimate law enforcement activities are not impeded. After concurrence by CBP officials, ICE agents will assume responsibility for all aspects of the investigative activity as outlined in the protocol.

The DFO, SAC, or CPA may also authorize an emergency parole for 72 hours for informants or witnesses under exigent circumstances for other LEAs when parole is important to an investigation, prosecution, or other activity deemed necessary to maintain public safety. The authority should be exercised only when the LEA could not reasonably have requested the parole in advance through the PHAB in accordance with the protocol, and the parolee must remain in the custody of agents from the requesting LEA. (IFM Revisions: CBP 14-06)

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(h) Conditional Entrants, Refugee-Parolees, Lautenberg Parolees and Others. Over the years the Attorney General, acting through the Service, has used his or her authority to admit or parole various groups of individuals who may or may not have the characteristics of, and identify themselves as, refugees. These groups of individuals are different from those admitted as refugees under section 207 of the Act or those granted asylum under section 208 of the Act. In order to determine the various types of benefits for which they may be eligible, it is necessary to have a working knowledge of the terms and groups involved:

- **DISPLACED PERSONS** - Under the Displaced Persons Act of 1948, the first legislation enacted specifically for refugees in the nation's history, the United States admitted more than 400,000 persons who were displaced by World War II and its aftermath. Someone admitted in this category is eligible to be issued a Refugee Travel Document.
- **HUNGARIAN REFUGEES** - Under the Hungarian Refugee Act of July 25, 1958, persons who were paroled into the United States as refugees from the Hungarian uprising of October 1956, and who had been in such parole status for at least two years, could be reinspected and admitted to the United States for permanent residence, without regard to the immigrant visa requirement. Someone paroled in this category is eligible to be issued a Refugee Travel Document.
- **CUBAN PAROLEES** - Since 1959 several hundred thousand Cubans have been paroled into the United States. Under legislation enacted November 2, 1966, such individuals who have been physically present in the U.S. can apply for adjustment of status to that of LPR. Permanent residence in such cases is granted as of the date of the person's entry into the United States or thirty months prior to the date the person applied for adjustment, whichever is later. Someone paroled in this category is not eligible to be issued a Refugee Travel Document.
- **CONDITIONAL ENTRANTS** - Prior to the 1980 Refugee Act, the United States admitted persons fleeing from persecution in communist countries of the Eastern Hemisphere and in countries within the general area of the Middle East under section 203(a)(7) of the Act. Under a proviso to that section, a limited number of individuals who were already in the United States could apply for adjustment to conditional entrant status. After two years in the United States (which was later reduced to one year) as a conditional entrant, the alien could be reinspected and admitted for permanent residence. Someone admitted in this category is eligible to be issued a Refugee Travel Document.
- **REFUGEE-PAROLEES** - Prior to May 18, 1980, the Service used its authority in section 212(d)(5) of the Act to parole certain refugees into the United States, including many who, while fearing persecution, were not from communist countries or countries within the general area of the Middle East. Such persons were allowed to apply for adjustment of status after two years (later reduced to one year) in the United States. Someone paroled in this category is eligible to be issued a Refugee Travel Document.

- **VICAM REFUGEES** -Following the fall of South Vietnam and Cambodia in 1975, the

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United States paroled more than 400,000 persons from Indochina. Under legislation enacted on October 28, 1977, those individuals (and certain others who were already in the United States in nonimmigrant or parolee status on March 31, 1975) were allowed to adjust to LPR status. Someone paroled in this category is eligible to be issued a Refugee Travel Document.

- **CUBAN-HAITIAN ENTRANTS** - An estimated 125,000 Cubans from the port of Mariel, Cuba entered the United States shortly after the enactment of the Refugee Act of 1980. There were also a considerably smaller number of Haitian nationals who entered the United States at about the same time. These individuals were not classified as refugees, but rather as "entrants." Beginning in 1984, the Service began adjusting those Cubans entrants who were otherwise admissible to LPR status under the provisions of the 1966 Cuban Adjustment Act. The status of Cuban/Haitian entrants was not finally resolved until the enactment of the Immigration Reform and Control Act of 1986 (IRCA), which included special legislative provisions. Someone in this category is NOT eligible to be issued a Refugee Travel Document.
- **LAUTENBERG PAROLEES** - As part of a program under the Lautenberg Amendment first included in the Department of State's appropriation bill for FY 1990, and extended thereafter, certain individuals from the former Soviet Union, or from Estonia, Latvia or Lithuania, who are found to be ineligible for refugee classification are offered parole by the Service. Those individuals include (but are not necessarily limited to) Jews, Evangelical Christians, and Ukrainian Christians of the Orthodox and Roman Catholic denominations. Prior to mid-1994, Lautenberg paroles were also offered to certain Vietnamese, Cambodians, and Laotians. After one year in the United States, parolees under the Lautenberg Amendment can apply for adjustment of status to that of LPR under section 245 of the Act, without regard to quota. Someone paroled in this category is NOT eligible to be issued a Refugee Travel Document.

(Former paragraph (h) redesignated (i), new paragraph (h) added IN98-14)

(i) Reparoles. Whenever you change the purpose or duration of a parole, a new I-94 must be prepared and processed. Collect the original departure section and forward it for data entry with the new arrival section. Give the new departure section to the alien. (Redesignated IN98-14)

(j) Termination of Parole. Under section 212(d)(5) of the Act, when the purposes of a parole have been served, the paroled alien is to be returned to the custody from which he or she was paroled and his or her case is to be dealt with in the same manner as that of any other applicant for admission. If such alien is found to be admissible, he or she may be admitted (if necessary, with the approval of an appropriate waiver). If not found admissible, the alien may be allowed to withdraw his or her application for admission and depart, or the alien may be prepared for removal proceedings. If the alien was paroled into the United States after arriving as a crewman, stowaway, VWP applicant or S nonimmigrant, the alien is not entitled to formal proceedings; otherwise, the type of removal proceeding involved depends upon the manner in which parole was authorized, whether the alien met the definition of arriving alien at time of parole, and the inadmissibility charge(s) being lodged:

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(1) If the alien's parole was authorized pursuant to an Advance Authorization for Parole (Form I-512) which was issued while the alien was in the United States in order to allow the alien to return to this country, the expedited removal process does not apply and the alien should be placed in removal proceedings under section 240 of the Act as an inadmissible alien, regardless of the grounds of inadmissibility.

(2) If the alien does not meet the definition of "arriving alien" contained in 8 CFR 1.1(q), the expedited removal process does not apply and the alien should be placed in removal proceedings under section 240 of the Act.

(3) If neither 1 nor 2 apply, and the alien is inadmissible under sections 212(a)(6)(C) and/or 212(a)(7), he or she shall be processed under the provisions of the expedited removal program in accordance with section 235(b)(1)(A)(i) of the Act and chapter 17.15 of this manual.

(4) If neither 1 nor 2 apply, and the alien is inadmissible under grounds other than, or in addition to (if the Service decides to apply such additional charges), sections 212(a)(6)(C) or 212(a)(7), the alien will be prepared for removal proceedings under section 240 of the Act.

An alien who is in the expedited removal process and who expresses a fear of persecution or torture, or a desire to apply for asylum, must be referred for a credible fear determination by an asylum officer. If such alien is found to have a credible fear of persecution, the alien shall be referred to an immigration judge for a removal hearing under section 240 of the Act.

However, if an alien whose parole has been terminated has already been found to have a credible fear of persecution (e.g., as part of the original decision to parole the alien), there is no need for a referral to an asylum officer for a new credible fear determination. Instead, the alien should be referred directly to an immigration judge for a removal hearing under section 240 of the Act. In so referring the alien, the processing officer shall follow the procedures set forth in chapter 17.6. Form I-862 shall indicate that the alien is an arriving alien (block 1) and that the notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution, in addition to listing the allegations, specifications and other information which must be provided. The record of proceeding file should also contain a copy of any credible fear determination made previously.

If an alien whose parole has been terminated, and who was previously found to have a credible fear of persecution, states in his or her sworn statement that he or she no longer has a fear of persecution or torture and that he or she wishes to withdraw his or her application for admission and depart, the processing officer may allow the alien to do so in lieu of processing the case for a hearing. The officer must make sure that the alien is making an informed decision. The officer may wish to consult with the Asylum Office before proceeding. However, if the alien does not wish to withdraw his or her application for admission and depart from the United States, the officer must process the case for a hearing under section 240 before the immigration judge. The processing officer does not

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have an option of issuing an expedited removal order. (Added IN98-14)

### 16.2 Refugee Admissions.

(a) Processing New Refugee Arrivals. Annually, the President, in consultation with the Congress, determines the number of refugees that may be admitted to the United States each fiscal year. The term refugee is defined in section 101(a)(27) of the Act; the authority for refugee admissions is found in section 207.

(1) General Screening. Screening and pre-processing of refugees is completed overseas, and those found qualified for admission will arrive, often in large groups, at a few ports-of-entry. They will have a packet of materials, the contents of their "A" file and an I-94. If all required paperwork is present:

- Endorse the I-94 and travel document (if any) with the refugee admission stamp, which bears the following legend, using security ink:

Admitted as a refugee for an indefinite period pursuant to section 207 of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment Authorized.

- Endorse the refugee stamp with the "A" file number, port code, date of admission and your stamp number.
- Collect all refugee packets and other supporting documents.
- Give the departure section of the I-94 to the alien and route the arrival section for data entry.
- Follow the procedures set forth in section (a)(2) regarding issuance of Form I-688B.

(2) Issuance of Form I-688B. Effective November 10, 2002, in accordance with section 309 of the Enhanced Border Security Act (BSA), the Service issues Form I-688B, *Employment Authorization Card*, to each individual admitted as a refugee under section 207 of the Act immediately upon his or her arrival in the United States and to each individual granted asylum under section 208 of the Act immediately upon the grant of asylum. In addition to issuing I-688Bs, officers continue to issue refugees and asylees at the time they attain such status the Form I-94, *Arrival-Departure Record*, indicating their status.

**Note:** This does not in any way change the fact that, under existing regulations, asylees and refugees are employment authorized automatically upon attaining their refugee or asylee status. Indeed, refugees and asylees are employment authorized regardless of whether they are in possession of an unexpired Form I-688B, *Employment Authorization Card*, or Form I-766, *Employment Authorization Document*, the two documents that the Service currently issues to refugees and asylees that evidence both employment authorization and

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identity. Officers should be aware of this distinction when communicating with asylees, refugees, government benefits agencies, employers, and other members of the public who may be seeking information about whether or when an individual has been authorized for employment.

(A) Responsibility for Issuance. Issuance of Forms I-688B is delegated to Inspections, District Offices, and Asylum Offices in the manner prescribed below.

- Designated POEs. Inspections personnel are responsible for issuing I-688Bs to each newly admitted refugee and each beneficiary of an approved Form I-730, Refugee/Asylee Relative Petition (refugees and asylees "following-to-join") immediately upon the alien's arrival at one of the ports-of-entry that are specially designated to receive all refugees and refugees following-to-join. (These specially designated ports-of-entry are equipped with the necessary I-688B production hardware and supplies. The list is subject to revision as ports-of-entry are added, subtracted, or changed.) Currently, these specially designated ports-of-entry include:
  - New York John F. Kennedy International Airport (JFK),
  - Miami International Airport (MIA),
  - Chicago O'Hare International Airport (CHI),
  - Los Angeles International Airport (LAX),
  - Newark Liberty International Airport (NEW),
  - Orlando Sanford International Airport (ORL),
  - Hartsfield Atlanta International Airport (ATL), and
  - Washington Dulles International Airport (WAS).
- Non-designated POEs. Some non-designated ports-of-entry may also be appropriately equipped. Inspections personnel at non-designated ports-of-entry that are appropriately equipped will issue I-688Bs to any newly arriving asylees following-to-join. Inspections personnel at non-designated ports-of-entry that are not appropriately equipped should inform any arriving asylees following-to-join of section 309 of the BSA and direct such asylees to the nearest District Office or District Sub-Office to receive their I-688Bs.
- District and Suboffices. In addition to issuing I-688Bs to those individuals referred by ports-of-entry, District Offices and District Sub-Offices are responsible for immediately issuing I-688Bs to individuals who were just granted asylum in a final decision by the Executive Office for Immigration Review (EOIR) or a federal court. The District and District Sub-Offices are responsible for issuing I-688Bs to asylees who were granted asylum by the Service in certain instances as described below. District and District Sub-Offices must issue I-688Bs to newly granted asylees on a walk-in basis.
- Asylum Offices. Asylum Offices are responsible for issuing, immediately upon the grant of asylum, a Form I-688B to each individual granted asylum by the

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Service who was interviewed at one of the local Asylum Offices. Asylum Offices must coordinate with District Offices and District Sub-Offices to establish the most efficient method for issuing I-688Bs, in accordance with the statute, to those asylees who were interviewed at circuit-ride locations. In some circuit-ride locations, it may be more efficient for the District or District Sub-Office to issue the I-688B. In other circuit-ride locations, for example, where the Asylum Office has a more permanent presence, the Asylum Office may be able to issue the I-688B.

(B) Validity Period. Form I-688B is to be issued with a one-year validity period. Issuing officers are to advise refugees and asylees receiving such I-688Bs that the employment authorization/identity documentation that is now being issued to them may be renewed at their option upon application to the Service. It is imperative that all ports-of-entry, District Offices, District Sub-Offices, and Asylum Offices ensure that all data on Form I-688B is uploaded to the Computer Linked Applications Information Management System (CLAIMS) on a timely basis.

(C) Procedure for Issuance of Form I-688B. Observe the following steps to issue I-688B upon completion of inspection for admission as refugee:

- Review I-765 in refugee's application packet
- Enable Employment Authorization Document System (EADS) screen
- Enter I-765 data into EADS
- Generate the camera card (Form I-765 CARD)
- Get applicant's signature (black ink) where indicated on card
- Place fingerprint (right index) where indicated on card
- Take applicant's photo with right ear exposed (remove any ear ring)
- Wait until Polaroid timer stops, cut (from the two photos developed) and place photo in laminate pouch (w/US map)
- Laminate card
- Deliver I-688B card to refugee
- Record A #, name and action in log for daily report
- Store data on floppy disk for forwarding to HQEADS (instructions forwarded separately)
- Forward I-765 with other processed documents to refugee's file at the files control office (FCO) of jurisdiction

(D) Security Issues Relating to the I-688B. It is critical to the integrity of the I-688B process that security measures are followed at the port-of-entry (POE). The following measures were recommended by the Office of Inspector General (OIG) in their Inspection Report Number I-94-07, March 1995, and the Office of Internal Audit (OIA) Report of the Review of the Employment Authorization Process in the Washington and Los Angeles District Offices, Report Number 96-02, February 1996, following a review of the I-688B process in the INS District Offices.

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Each POE must follow standard operating procedures for the I-688B process.

Each POE will institute the I-688B process with a separation of duties and supervisory oversight to the extent possible given individual office circumstances.

(i) Data Integrity:

- Each POE must assign individual employee identification codes and passwords for access to the employment authorization document (EAD) computers. Observe the security requirements for periodic change of passwords.
- Each POE must do data entry on an as needed basis and each POE will do timely data updates of I-688B cards issued.
- Each POE must download and ship EAD data to INS Headquarters following the required format in a timely manner. INS Headquarters will follow up with each POE individually regarding untimely data submissions. A daily submission is preferred.
- Each POE will receive timely CIS error reports and will make the needed corrections in a timely manner.
- The POE will not issue EAD extensions. After receiving an EAD upon admission at the POE, refugees must apply for optional renewal EADs by submitting a Form I-765 directly to the Nebraska Service Center. Optional renewal EADs will be issued using the Form I-766.

(ii) Security of the EAD Program:

- The EAD laminate is a secure document. The laminates must be stored in a secure area overnight or when otherwise not in use.
- Access to laminates must be on an as needed basis and must be strictly accounted for.
- Each POE must inventory the EAD laminates on hand to establish a baseline for further laminate receipt and issuance. The inventory will consist of an initial hand count of each box of laminates received from the ERO and each box will be sealed until the box is to be used. (Instructions for ordering forwarded separately.)
- Each POE must maintain a laminate log that accurately reflects the number of laminates received, used, and the number of laminates on hand for each month. The monthly laminate report shall be sent to the attention of Jean Weber, ERO, or as otherwise directed. Include a telephone and fax # for the reporting POE.
- Each POE must submit a monthly laminate log to the ERO.
- Each POE must inventory the EAD camera equipment and validation plates for each office that were purchased on September 27, 2002. See attached equipment order for each office.
- Each POE must verify the identity of the person to whom an I-688B card is

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issued. Verification of identity shall be accomplished through personal delivery of the card.

### (iii) Checklist of Security Measures:

- Provide Jean Weber, ERO Vermont, with designated POC at each office location and telephone number; each office shipping address; and initial laminate needs. Denise Curley is the ERO official overseeing the laminate storage at Vermont.
- Prepare and submit to ERO a monthly laminate report with precise inventory of laminates on hand at the end of the month (per OIG report).
- Count laminates in each box when received and seal box until it is used.
- Apply property control procedures to account for validation plates
- Establish proper supervision
- Ensure proper secure storage of laminate and validation plates for each Polaroid camera:
- Validation plates must be locked up each night.  
Exact number of laminates allocated to be used each day.
- Ensure separation of duties – no one person should control all key aspects of the transaction or event.

(3) Medical Screening. Some refugees receive a medical examination and any necessary immunizations at the refugee processing center overseas. Others must have this process completed after entry. Examine the refugee packet to determine if a medical examination form is present. If there is none in the packet, question the refugee to find out if he or she has a medical examination certification. If no medical examination was completed, defer the inspection to the onward local office where the refugee will first reside. That office will arrange for completion of a medical examination prior to admission.

(4) Routing of Refugee Packet. Upon completion of the inspection and admission of a refugee, send the refugee packet to:

INS/Nebraska Service Center  
P.O. Box 87730  
Lincoln, NE 68501-7730

**Note:** In the past, some ports of entry have used different variations of the refugee admission

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stamp legend. These variations have caused problems for refugees when they apply for social security cards and other documents, since the staff at the issuing agencies may not accept an I-94 containing non-standard language as genuine. If a refugee is in possession of an I-94 bearing the refugee admission previously used by those ports of entry, the alien may file Form I-102, with fee, seeking a new I-94. Such I-102 should be filed with the service center having jurisdiction over the alien's place of residence. However, if the alien is seeking re-admission at a port-of-entry and is in possession of an I-94 bearing the old-style legend, the inspecting officer should retain the previously-issued I-94 and issue the alien a new one without fee or application.

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(b) Returning refugees. In general, a refugee may temporarily depart the U.S. and reenter while in refugee status only if granted advance permission to do so. See appendix 16-1 for information regarding the appropriate endorsement to be placed in the alien's refugee travel document.

If an alien presents an unexpired I-571 clearly endorsed "Refugee" on the data page, inspect it for photo substitution or alteration. If you are satisfied that the refugee is the rightful bearer of the travel document and that he or she is still entitled to that status (i.e., is admissible to the U.S. and has not re-availed him or herself of the protection of his or her country of origin), endorse the I-571 with the refugee admission stamp, date, port and stamp number, and return the document to the alien, unless it is nearing expiration.

If the I-571 is nearing expiration (e.g., is valid for less than thirty days from the current date), advise the alien that it is almost expired and that it should be returned to the Service upon expiration. Suggest that if the alien will not be traveling outside the country again before the expiration date, you can collect it at this time. However, if the alien indicates that he or she wishes to retain the document until the expiration date, return the as-yet unexpired document to the alien.

Occasionally, you may encounter a returning refugee who departed the United States without any intention of abandoning status as a refugee, but who failed to obtain a refugee travel document prior to his or her departure. Effective April 1, 1997, the regulations allow district directors the discretion to approve an application for a refugee travel document from an alien who is outside the United States or applying for entry at a port-of-entry. The alien must submit Form I-131, Application for Travel Document, with fee, and must establish that he or she did not intend to abandon his or her refugee status, that he or she did not engage in activities while outside the United States inconsistent with continued refugee status, and that he or she has been outside the United States for less than 1 year. [See 8 CFR 223.2.]

Individuals who have been approved for a Refugee Travel Document overseas will

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present either Form I-571 or a boarding letter issued by an INS overseas district or consular post identifying them as returning refugees. (Boarding letters may be used if the aliens cannot wait overseas for the issuance of the travel documents.) If the alien appearing at the POE is seeking admission to the United States as a refugee and is not carrying Form I-571 or an appropriate boarding letter, you should satisfy yourself that the alien is the individual he or she claims to be and is still entitled to refugee status. If you determine that the individual is admissible as a refugee, you may accept, adjudicate and approve an I-131 application for a Refugee Travel Document.

If all the necessary information is available, including the alien's A-file, and the alien submits the required photographs, you may adjudicate the application and forward it to the Nebraska Service Center, attention: Special Operations Officer for production of the refugee travel document. If you are at a port of entry and the all necessary information (including the alien's A-file) is available but the alien does not have the required photographs and it is not possible to produce them at the port of entry, you may still approve the application and forward it to the Nebraska Service Center, instructing the alien to obtain and forward the photographs to the Special Operations Officer at that service center. You should attach a memorandum to the Special Operations Officer advising that the application has been accepted and approved in accordance with 8 CFR 223. Admit the alien as a refugee by endorsing a Form I-94 with the refugee admission stamp, as above.

On the other hand, if you are not satisfied that the individual is admissible, you should neither adjudicate nor approve the application; instead you should forward the application to the Nebraska Service Center with a memorandum explaining why you find the alien inadmissible and treat the alien as any other inadmissible applicant for admission.

If you are satisfied that the alien is a returning refugee, but do not have sufficient information to adjudicate the application, you may defer the alien's inspection using the procedures in Chapter 17.1, or (if at a land border) require the alien to wait in contiguous territory until his or her file can be obtained and the information verified. See also Chapter 17.15 for expedited removal processing of aliens with refugee claims that cannot be verified.

You should be aware that the provisions of paragraphs (4), (5), and 7(A) of section 212(a) of the Act are not to be applied to refugees. The remaining grounds of inadmissibility may be waived for refugees for humanitarian purposes, to assure family unity, or in the public interest, except for section 212(a)(2)(C) or (3)(A), (B), (C), or (E). Waiver applications should be filed on Form I-602.

(c) Special procedures for adjudication of Refugee Travel Documents for aliens appearing at overseas INS offices. Effective April 1, 1997, overseas district directors

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also have discretionary authority to accept and approve applications for Refugee Travel Documents under the same circumstances as indicated above. Once the application has been approved and forwarded, with photographs, to the Nebraska Service Center, the overseas district director may decide to authorize parole of the alien into the United States if overriding concerns dictate that the alien not be required to remain outside the United States until the Refugee Travel Document has been issued and delivered. If such person arrives at a port-of-entry in possession of a properly-issued I-512, he or she may be paroled into the United States for the period of time necessary for issuance and delivery of the Refugee Travel Document to his or her U.S. address, at which time he or she will be required to report to his local INS office for termination of the parole and inspection as a refugee bearing a Refugee Travel Document.

### (d) "Following to Join" Dependents.

(1) General. The spouse and children of a refugee, if not separately eligible for refugee status, may follow to join the principal refugee, whether the principal has remained in refugee status or has been adjusted to lawful permanent resident status. The qualifying relationship must have existed at the time the principal refugee was admitted to the U.S. (a child who was *in utero* at the time of his or her father's admission as a principal refugee meets this requirement) and continue to exist at the time of the spouse's or child's admission. To bring family members to the U.S. under the "following to join" provisions of the Act, a refugee must submit Form I-730 to the Nebraska Service Center. Approved I-730s are transmitted to the National Visa Center and then forwarded to the overseas posts where the dependents reside. All I-730 beneficiaries are interviewed, either by INS or consular officers, to establish their identities, their relationship to the petitioner, and their admissibility to the United States.

(2) Admission procedures. Applicants for admission who fall within these categories should be inspected in accordance with the following:

- Following to join refugees will arrive at the POE with a packet of materials, including the contents of their A files and an I-94. Endorse the I-94 with the refugee admission stamp:

Admitted as a refugee for an indefinite period pursuant to section 207(c)(2) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment Authorized.

- Enter the port, date and your admission stamp number and follow the standard procedures for refugee admissions outlined in Chapter 16.2(a) of this field manual (including issuance of Form I-688B).

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## 16.3 Asylum Applicants and Asylees.

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(a) General. Asylum applicants are aliens whose claims of eligibility for asylum have not been finally decided. An asylum applicant may travel from, and return to, the U.S. if granted an advance parole. If you are satisfied the asylum applicant is otherwise admissible, parole the alien for the time period indicated on the I-512, endorsing the I-94 and I-512 with the parole stamp, date, port and stamp number. Endorse the parole stamp: "asylum applicant" as appropriate. Return the I-512 to the alien if it is valid for multiple entries and not nearing expiration. If expiring or valid for a single entry, retain the document and forward it to the appropriate files control office.

Asylees are persons who have been granted asylum, but who either have not applied for or have not been granted adjustment to permanent residence pursuant to section 209(b) of the Act. An asylee may be issued a refugee travel document on which to travel from and return to the United States. Upon presentation of a refugee travel document by an asylee, you must verify that the person presenting the document is the authorized bearer and that the document is still valid, establish that the alien has not re-availed him or herself of the protection of the country in which he or she claimed persecution or has become inadmissible (under one of the limited number of grounds of inadmissibility which also constitute mandatory bars to asylum under section 208(a)(2) of the Act), and admit the alien as a returning asylee. (**Note:** Simply traveling to his or her home country does not necessarily mean that the alien has re-availed him or herself of the protection of that country.) Endorse the I-571 and the I-94 with the asylee stamp bearing the legend:

Admitted for an indefinite period as a returning asylee under section 208(b)(1) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment authorized.

The same provisions discussed in Chapter 16.2(a) relating to the issuance of a replacement I-94 to an alien in possession of an I-94 bearing a legend previously used by the Service applies equally to asylees. Furthermore, the same provisions discussed in Chapter 16.2(b) and (c) relating to previously admitted refugees who departed the United States without having obtained a refugee travel document or advance parole also apply to asylees.

(b) "Following to join" dependents.

(1) General. The spouse or children of an asylee may also be granted asylum if they are accompanying or following to join the principal asylee, even if the principal asylee has already adjusted status to permanent residence under section 209 of the Act. Such dependents are commonly referred to as "VISAS 92" cases. The relationship with the principal asylee must have existed at the time the asylum application was approved (a child who was *in utero* at the time his or her father was granted asylum satisfies this requirement). Also, the family member must not fall within any of the mandatory grounds for

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a denial of asylum [See 8 CFR 208.19].

(2) Admission procedures. Applicants for admission who fall within these categories should be inspected in accordance with the following:

- Assuming that the VISAS 92 case is not subject to one of the mandatory bars to asylum, admit the alien for an indefinite period using the asylee stamp bearing the legend:

Admitted for an indefinite period as a dependent of an asylee under section 208(b)(3) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment authorized.

- In accordance with section 309 of the Enhanced Border Security Act of 2002, you must issue an Employment Authorization Card (Form I-688B) to the alien at the time of admission (see Chapter 16.2(a)(2) of this field manual.)

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### 16.4 Temporary Protected Status (TPS) Cases.

An alien granted TPS may travel out of the U.S. only if granted an advance parole [See 8 CFR 244]. If a TPS alien presents an unexpired I-512, and is otherwise admissible, parole the alien for the balance of time TPS is available for aliens of the relevant nationality. A TPS alien attempting reentry without an advance parole should be placed in removal proceedings. A table of TPS dates is included in the Adjudicator's Field Manual, Appendix 41-1.