



August 17, 2012

Beyond the Border Coordinator
United States Department of Homeland Security
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Re: AILA Comments to the Beyond the Border Action Plan

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Dear Beyond the Border Coordinator:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the “[United States-Canada Beyond the Border Action Plan](#),” released in December 2011 (AILA Doc. No. 11120870).¹ The United States Department of Homeland Security (DHS) has [recently requested renewed comments](#) on this plan through its website and press releases.²

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Since 1946, our mission has included the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent U.S. and Canadian businesses, as well as U.S. citizens, lawful permanent residents, and foreign nationals, regarding the application and interpretation of U.S. immigration laws. We believe that our members’ collective expertise provides experience that makes us particularly well qualified to offer views on this matter. We previously submitted comments on the draft Beyond the Border Action Plan in January 2012, and appreciate the opportunity to submit more detailed comments now, building upon dialogue initiated with United States Customs and Border Protection (CBP) (AILA Doc. No. 12011062).³

I. INTRODUCTION

AILA applauds DHS and CBP’s efforts to facilitate business travel while maintaining U.S. security interests but recognizes that the operational balance between these two priorities tips heavily toward security. Indeed, CBP as an agency was created in the aftermath of 9/11 and has been tasked with enforcing many new and important U.S. national security initiatives through the screening and inspection of foreign travelers. AILA members and the companies they represent have noticed that, at times, this focus on national security seems to

¹ *Beyond the Border Action Plan*, <http://www.dhs.gov/xlibrary/assets/wh/us-canada-btb-action-plan.pdf>; AILA Doc. No. 11120870, <http://www.aila.org/content/fileviewer.aspx?docid=37873&linkid=241009>

² *Provide Your Input on the Beyond the Border Action Plan*, <http://www.dhs.gov/provide-your-input-beyond-border-action-plan>

³ *AILA Comments on Beyond the Border Action Plan*, AILA Doc. No. 12011062, <http://www.aila.org/content/default.aspx?docid=38135>

counteract rather than facilitate the lawful inspection and admission of foreign business travelers. In fact, foreign business travelers commonly feel they are treated by CBP as potential threats to U.S. economic and security interests, rather than U.S. business partners and potential assets to the U.S. economy.

Due to the focus on law enforcement and safeguarding against illegal trade and terrorist activity, CBP officer training in U.S. immigration law is unfortunately limited. Given this limited training, officers inspecting business travelers sometimes make admissions decisions, which are incorrect under the complex framework of U.S. immigration law. Unfortunately, in the aftermath of an error or a misunderstanding of U.S. immigration law, it is extremely difficult for U.S. companies and their representatives to meaningfully and effectively seek review or redress with CBP. CBP officers are often reluctant to release records or information related to an individual's refusal of entry or to consider rehabilitative action following refusal, and they commonly cite security concerns to justify this lack of transparency. Some officers flatly refuse to communicate with immigration attorneys, U.S. companies, or foreign travelers, much less review or reconsider admissions decisions. This lack of communication and transparency impedes lawful business travel and is harmful to U.S. business interests. AILA recognizes that some of these interactions between CBP officers and U.S. business stakeholders are aberrations, and some Ports of Entry maintain open and positive relationships with the public. At the same time, the lack of consistency and transparency in admissions decisions reflect a need for increased immigration law training and more effective public engagement policies to facilitate lawful business travel. Furthermore, AILA wishes to reinforce the role of U.S. businesses and their legal representatives as partners with CBP in facilitating the lawful admission of foreign business travelers.

The Beyond the Border Action Plan contains a number of objectives which can be leveraged to improve CBP processes and increase public engagement to facilitate lawful business travel. The Action Plan is robust, containing measures to improve CBP's internal processes related to immigration training and consistency in adjudication, and also external processes relating to CBP interaction with foreign business travelers and their U.S. business sponsors prior to, during, and following the admissions process. AILA wishes to reinforce the need for change in these areas and offers assistance where needed with improving internal training materials and agency manuals, as well as establishing uniform processes for CBP's public engagement with business stakeholders.

AILA believes the following issues in the Beyond the Border Action Plan merit further discussion, and represent important potential improvements in CBP processes:

II. IMPROVEMENTS TO CBP's INTERNAL TRAINING AND GUIDANCE REGARDING ADMISSION OF BUSINESS TRAVELERS

Beyond the Border Action Plan: "CBP ... will provide enhanced administrative guidance and training to their officers and enhanced operational manuals to achieve optimal operational consistency at all ports of entry on business traveler issues."

Current CBP protocols and procedures related to the admission of business travelers often vary by Port of Entry. For example, during TN and L-1 adjudications, some Ports of Entry ask foreign applicants and beneficiaries to fill out a form listing their proposed U.S. job title and duties, even though this

information is already provided by the sponsoring U.S. company in the application materials presented. Others ask travelers to write down the purpose for their entry or their background or expertise in their field on a blank piece of paper. In TN adjudications, some CBP officers focus narrowly on the job title rather than the actual job duties in determining whether the traveler is eligible under a particular NAFTA occupational classification. In L-1 adjudications, different ports inconsistently follow the mandate of 8 CFR § 214.2(l)(17)(iv) regarding when to collect fees, when to return a deficient petition to the applicant for correction, and how and when to deny an L-1 petition. These varying processes are often redundant, creating additional work for CBP officers beyond what is required by statute and regulation. Moreover, these processes do not appear to enhance the quality of CBP inspection and review, and instead add confusion and complication to the admissions process for business travelers.

Improved CBP training and administrative guidance under this section of the Beyond the Border Action Plan would help to ensure consistency in the admission of business travelers. The establishment of clear guidelines would also make admissions decisions more efficient, freeing officer time and resources to focus on other priorities. AILA encourages the implementation of the Action Plan to include the following components:

A. Establishing local immigration expertise at Ports of Entry and/or Field Offices

AILA is concerned about the lack of depth in U.S. immigration training and expertise on a local level at CBP Ports of Entry, which has contributed at least in part to the varying procedures in use by different CBP jurisdictions. An ideal solution to improve this would be to establish local subject-matter experts on U.S. immigration law on a Port of Entry- or Field Office-level basis. Centralizing the agency's brain trust in immigration issues in this way would benefit CBP operations on the local level, providing a consistent point of contact for local officers to answer immigration questions, perform quality control checks on immigration adjudications, and ensure the consistency of admissions decisions. It would also benefit CBP on a national level, as narrowing the number of CBP supervisors overseeing immigration issues could facilitate high-level, subject-matter-specific training, which would reinforce overall quality and consistency. This would be an efficient use of agency resources and would help to preserve the agency's expertise in immigration issues in the aftermath of CBP's separation from legacy INS.

B. Training and Musters

The Beyond the Border Action Plan lists "enhanced training... on business traveler issues" as a specific objective. AILA encourages CBP to increase the amount of U.S. immigration law training provided as part of CBP's standard officer training academy curriculum. In particular, additional training is needed regarding permissible activities for B-1 business adjudications, TN adjudications, and L-1 adjudications at Ports of Entry along the U.S.-Canadian border. This training will enhance officers' understanding of the complexity of U.S. immigration laws and, coupled with improved administrative manuals articulating the standards for immigration adjudications, should improve the consistency and quality of admissions decisions for business travelers.

Officer training should continue beyond the initial CBP officer training academy curriculum to reinforce each officer's knowledge base regarding immigration issues. Continued training should be dynamic, focusing on trends and concerns raised by stakeholders, as well as recent changes to the law. AILA

encourages CBP to continue issuing musters to the field, as needed, to clarify immigration laws and their application to the admissions process for business travelers. Musters should also trigger updates to CBP's written administrative materials to reinforce and memorialize legal interpretations over time.

C. Updates to Inspector's Field Manual and NAFTA Handbook

The Beyond the Border Action Plan also lists "enhanced operational manuals... on business traveler issues" as a specific objective. AILA would specifically encourage updating as well as adding more guidance to the Inspector's Field Manual (IFM) and the NAFTA Handbook (if still internally used and kept current) relating to the following areas affecting business travelers:

- *B-1 Business visitors.* The IFM lists numerous specific factual circumstances which are appropriate for B-1 admission. However, for cases which fall outside these specific facts, the IFM provides very limited generalized guidance regarding the factors which differentiate B-1 business travel from U.S. employment requiring work authorization. This lack of guidance often leads to confusion and frustration of legitimate business visitor activities. AILA would suggest adding a more robust explanation of general qualifications for B-1 business visitor travel, including clear standards for officer admission of visitors engaged in activities collaborating with U.S. companies related to the traveler's foreign employment. AILA also supports CBP's expansion of NAFTA-specific B-1 admission policies concerning after-lease services, as outlined in the Beyond the Border Action Plan.
- *TN applicants.* AILA practitioners and the companies they represent frequently report confusion in CBP adjudication of TN applications where the applicant's actual job title does not exactly align with a TN occupation listed in NAFTA Appendix 1603.D.1. (For example, an "engineering manager" or "sales engineer" may be subjected to extensive questioning and denials, notwithstanding the fact that the duties to be performed clearly require a professional engineer.) AILA would strongly recommend adding instructions to the IFM to clarify that officers should consider the full range of job duties which will be performed by the applicant in adjudicating his or her eligibility for TN classification, not just the job title. CBP should also consider updating the NAFTA Handbook with these procedures.
- *L-1 petitions.* CBP Ports of Entry inconsistently handle procedures for the receipt and adjudication of L-1 petitions pursuant to 8 CFR § 214.2(l)(17)(iv). AILA would strongly recommend that the agency review these regulations and draft procedural instructions in the IFM and for CBP's receipt and review of L-1 petitions for Canadian beneficiaries. The instructions should include clear guidance on when to collect fees, when to return the petition to the beneficiary or petitioner for clarification or additional evidence, and procedures for CBP communication with the petitioning U.S. company regarding L-1 petitions (not just the beneficiary applying for admission at a Port of Entry). CBP should also consider updating the NAFTA Handbook with these procedures.

D. Public Disclosure of training materials, musters, and written administrative guidance

Because CBP's internal processes are designed to facilitate lawful travel and admission of foreign business travelers, AILA strongly encourages increasing agency transparency in publicly releasing its immigration-related training materials, field musters, written administrative manuals, and ongoing updates to the same. Full public disclosure of these materials would help business visitors, U.S. businesses and their representatives to ensure that foreign employees of U.S. companies and applicants for admission as business visitors comply with lawful and reasonable processes in their applications for admission to the United States. Public disclosure would also help CBP, as increased public disclosure of immigration-related procedures would result in better-prepared travelers and accordingly, more efficient admissions.

Finally, AILA also encourages the creation of a new component of CBP's website to promote transparency and public access to this information. While CBP's website currently contains some helpful information regarding TN and L-1 admissions, this information is obscured by a non-user-friendly interface through CBP's "Help" website, which is not easily navigable or accessible.

III. IMPROVEMENTS TO CBP PROCEDURES FOR BUSINESS TRAVELERS PRIOR TO AND DURING THE ADMISSIONS PROCESS

Beyond the Border Action Plan: "We will review current administrative processes under which all categories of business travelers may request adjudication of employment and related petitions by [U.S.] immigration authorities to identify and resolve potential issues prior to the actual date of travel. Based on this review, and with the objective of increasing the use of the advanced processes, by September 30, 2012, we will improve current processes and, as appropriate, establish new processes."

A. Advance Adjudication

AILA supports providing U.S. businesses with the option of having CBP pre-adjudicate applications for employment authorization for their Canadian employees, as specifically suggested by the Beyond the Border Action Plan. Under current policy, Canadian applicants for admission must appear at the Port of Entry to apply for admission in TN or L-1 status immediately prior to the beginning of U.S. employment. Since approval cannot be guaranteed, travelers are left in a precarious position where they must wrap up their affairs abroad (often including selling or renting a home and packing up all belongings for relocation) before gaining any certainty that they will be admitted to the United States. Likewise, U.S. businesses must plan and prepare to receive new foreign managers and professional employees but do not know whether the new worker will actually be authorized to accept work until a day or two before the intended start date. Pre-adjudication of applications for U.S. employment authorization will add a valuable measure of certainty for U.S. businesses to accurately plan for hiring Canadian employees. It will also provide Canadian business travelers with certainty in their planning to relocate temporarily to the United States.

Despite these potential benefits to U.S. businesses and foreign business travelers, AILA believes pre-adjudication of these applications should be optional. 8 CFR § 214.6(d)(2) provides that applicants for admission in TN status may make an application for admission directly at a Class A port of entry, and 8

CFR § 214.2(l)(17)(i) contains a similar provision for Canadian citizens seeking admission in L-1 status. These regulations preserve the option to seek adjudication directly at the port of entry at the time the alien seeks admission.

AILA also suggests that, if a business traveler and/or his prospective U.S. employer seeks pre-adjudication, the petitioning U.S. company, the foreign traveler, and/or the attorney of record should be given a chance to respond to any deficiencies in the application or petition before any formal denial is recorded. Effectively, the initial submission of an application or petition for pre-adjudication should be treated as a first step to initiate further dialogue regarding any legal issues or doubts surrounding the case. This appears to be consistent with CBP's stated objective to "identify and resolve potential issues prior to the actual date of travel." This would also provide valuable opportunities for CBP to directly engage with U.S. businesses and their representatives. CBP's open dialogue with U.S. companies regarding immigration adjudications for their foreign employees would contribute to the U.S. economy, allowing these companies to use immigration laws to the fullest extent possible to direct and grow their businesses.

In the event that eligibility for the desired classification cannot be established by the business traveler and sponsoring U.S. company, the applicant seeking pre-adjudication should retain the ability to withdraw the application for admission, if he or she is in fact considered to be applying for admission through the pre-adjudication screening procedures. As provided at 8 CFR § 235(a)(4): "[a]n alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission..."

For those business travelers who seek pre-adjudication, the processing time should be limited to a short period, such as 10 days, to facilitate timely travel.

B. Identifying & Resolving Potential Issues Prior to Actual Travel

In addition to the pre-adjudication option, other means should be established by which potential legal issues can be identified or resolved prior to travel. Specifically, AILA suggests there should be at least one designated point of contact for each Class A Port of Entry who can answer immigration-related stakeholder questions over the phone in advance of adjudication. While we understand that CBP cannot provide binding case-specific answers through such communication, it would be extremely helpful to stakeholders if trained CBP personnel provided information about CBP's interpretation of legal requirements. The ability to call a Port of Entry for this sort of information not only would provide business travelers with valuable information about their eligibility for admission, but it would also assist CBP to ensure that when applicants apply for admission, their documents are in order. In addition, some travelers might decide not to apply for admission at all based on feedback from CBP about a proposed course of action, thereby reducing CBP's workload.

AILA proposes that the CBP website be updated to include, under the "Ports" tab, specific contact information for Immigration questions, including the name(s) and telephone number(s) of relevant contact persons. The website currently contains contact information for numerous Customs-related issues but most Service Ports do not currently have contact information listed for immigration questions. Designating a person or persons to field such phone calls and publicly listing the phone number where

those people can be reached would go a long way toward advancing resolution of potential issues prior to actual travel.

C. CBP Communication with U.S. Companies and Their Representatives

Under current CBP procedures, communication regarding admissions decisions and adjudication of benefits only occurs directly between CBP and the individual traveler at a Port of Entry. CBP does not routinely provide any records or decision information to U.S. businesses sponsoring foreign employees. Moreover, U.S. businesses and their representatives report difficulties communicating with CBP regarding an application or petition which was returned as deficient or denied at a Port of Entry. In some cases, CBP officers have refused or been reluctant to provide information regarding the legal reasoning or rationale for denial of applications. To paraphrase one officer's reasoning for withholding such information: "If I tell you why the application was denied, you'll just re-work it to try to get it approved."

As part of CBP's Beyond the Border Action Plan to "improve current processes, and as appropriate, establish new processes," AILA would urge CBP to formally condone officer communication with U.S. businesses and their legal representatives as part of business traveler adjudication and admissions. Such communication is critical in cases where applications are refused or denied at the border, to enable U.S. companies to make informed business decisions about their continued efforts to hire and sponsor foreign workers. Especially in the absence of written forms clarifying additional evidence needed to complete an application or an applicant's ineligibility for a particular classification, verbal communication is the only way to clarify and obtain such information. Individual travelers are often unaware of immigration laws and procedures and cannot adequately communicate information they are told by CBP back to petitioning U.S. companies. Likewise, U.S. companies often engage immigration counsel to handle these matters on their behalf due to the complexity of immigration law. Accordingly, we urge CBP to allow, and even encourage, officer communication with U.S. businesses and their attorneys regarding foreign business travelers. U.S. companies want and need to be part of the lawful admissions process affecting their foreign employees. They wish to be considered as partners in resolving issues arising during the admissions process, not adverse parties presumed to be perpetrating fraud if they try to rehabilitate applications which have been denied.

To help clarify any deficiencies in an application for immigration benefits which is refused or denied by CBP at a Port of Entry, AILA further recommends the prompt release of officer notes regarding such action to a U.S. company or its representative upon request. To ensure such information is released in a timely fashion, it should be released directly by the Port of Entry to the U.S. company, and it should not require filing of a FOIA request (a response to which may not be received for months to years). Alternatively, CBP should also consider drafting a standard form for officer use to elaborate officers' reasons for refusing to accept deficient petitions or denying applications, and a copy of the form should be given to the traveler upon refusal or denial.

D. Trusted Company Registration

At the AILA Conference in Nashville, TN, on June 15, 2012, CBP indicated that it is considering implementing a trusted company registration system to ease international travel. As described, the

registration process for U.S. companies with CBP might be similar to the E-2 company registration process with the U.S. Department of State.

While AILA generally supports any CBP initiative to facilitate lawful business travel, we caution that company registration is no replacement for individual consideration of the merits of each application. In other words, the fact that a company is not registered should not be viewed as an indication that it is not to be trusted. AILA also notes that other DHS efforts to verify the bona fides of U.S. business petitioners for foreign employees have actually hindered, not facilitated, lawful business travel. Specifically, USCIS efforts in establishing the VIBE program have resulted in increased Requests for Evidence based on simple clerical discrepancies, increasing, rather than decreasing, agency workload with little appreciable benefit.

IV. IMPROVEMENTS TO CBP REDRESS PROCEDURES FOR BUSINESS TRAVELERS REFUSED ENTRY TO THE UNITED STATES OR OTHERWISE EXPERIENCING COMPLICATIONS WITH U.S. ADMISSION

Beyond the Border Action Plan: “[W]e will review the effectiveness of existing redress and recourse mechanisms for business travelers whose applications are denied, and identify and implement, by December 31, 2012, administrative and operational improvements.”

A. Ineffectiveness of Existing Redress/Recourse Mechanisms

CBP’s existing redress and recourse mechanisms are not perceived as being effective by business travelers and their representatives due to challenges in communicating with CBP, a lack of agency transparency, and a lack of timely resolution of inquiries. Specific comments regarding existing mechanisms are as follows:

Contact with the Port of Entry or Field Office

CBP does not provide clear and consistent point of contact information for business immigration-related issues on its website for Ports of Entry. As a result, attempting contact with any officer regarding a specific immigration case or event can be difficult or impossible. Even if contact is established and the CBP officer is responsive, there is no protocol for follow-up, and multiple communications may be necessary to gain any information about a case, much less review or redress.

Additionally, CBP does not clearly identify the appropriate point of contact at a Port of Entry for escalation of an issue. It is generally understood that CBP prefers that the inspecting or interrogating officer is not the one to be contacted. Other than that, contacts at a Port of Entry may include a Section Chief, a supervising officer who oversees inspection and admission, Head of Passenger Operations, or the Port Director. A CBP Field Office may be pulled into the dialogue, with someone in a supervisory position in charge of review or quality control of inspection and admission issues, such as a Security and Facilitation Director or a Field Office Director, taking action. This range of personnel and locations presents significant challenges to those seeking quick resolution of an issue related to a decision at a Port of Entry. It is also an inefficient use of CBP personnel.

Primary Lookout Override (PLOR)

A CBP supervisor can use PLOR to suppress derogatory information on a particular individual's record so that it will not appear during primary inspection. However, CBP has stated that PLOR will likely not be used if there is no identity mismatch, even though there may be derogatory information about the applicant (for example, a criminal conviction, when the conviction was vacated). This renders this option useless for many, despite CBP's recognition of serious implications of the possibly erroneous information in the system.

Deferred Inspection

This mechanism is often used successfully to resolve issues before an adverse action is finalized such as 1) to correct an admissions error committed by CBP at a Port of Entry and obtain a new, corrected I-94 card or 2) to address an applicant's admissibility to the United States after a case is referred by a Port of Entry for further review. However, it is considered ineffective by many in the business community because CBP has interpreted federal regulations to conclude that an applicant for admission has no right to attorney representation during the Deferred Inspection process. Policies regarding attorney representation at Deferred Inspection vary according to each office. Especially to the extent that the admissions process affects a foreign employee sponsored by a U.S. business, the company's legal representatives should be permitted to speak to CBP officers regarding its clients' admissibility and related legal issues and to assist in presenting evidence on behalf of the U.S. company.

DHS-TRIP (Traveler Redress Inquiry Program)

This program was designed as "a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs," including denied or delayed airline boarding, denied or delayed entry into the United States at a Port of Entry, or regular referral to secondary inspection. However, case resolution may take an extremely long time, and there are no reliable benchmarks for government processing times. DHS-TRIP may take six months to over a year to complete review of a case, if complex admissibility issues are involved. DHS-TRIP is far from a transparent program, and written responses following government review often do not confirm or deny whether any corrective action was taken. The substantive, case-specific portions of written responses are usually limited to one or two sentences, despite complex legal admissibility issues which may be discussed over several pages in a DHS-TRIP redress request; such responses do not acknowledge that complex legal issues were reviewed or considered. E-mails and case status inquiries to DHS-TRIP often go unanswered.

Filing a Complaint

The CBP website identifies four primary programs to receive and address customer complaints. Each program has different procedures for receiving and handling complaints. Details concerning these various CBP programs are scattered throughout the CBP website, and contact information is not always paired with program descriptions. It is unclear which of these programs, if any, are internally considered appropriate to receive and meaningfully consider requests for review of business traveler or

immigration issues (as opposed to simply provide feedback regarding negative experiences relating to inspection and admission).

Passenger Service Manager Program

Other than addressing immediate concerns or complaints of the traveling public at a port of entry, it is not clear what role, if any, Passenger Service Managers (PSMs) play in resolution of immigration errors or issues after the inspection/admission process. In addition, while those Ports of Entry currently served by a PSM are the largest and busiest airports, members of the public arriving at a land border or a smaller airport do not appear to have access to a PSM to resolve issues or complaints.

Comment Cards

Comment Cards are provided to all air and sea travelers who have been referred to secondary inspection and to air, land, and sea travelers who are subjected to a personal search. CBP written policy suggests that use of Comment Cards is widespread, but there is little evidence supporting this assertion.

CBP INFO Center

All complaints and compliments filed with CBP are reviewed, tracked, and addressed by the CBP INFO Center. The CBP INFO Center handles such reports whether originating with the general public, industry, Congress, or other government agencies. The CBP INFO Center's mission is to contact complainants, their attorneys, if applicable, or congressional representatives to acknowledge the complaint and resolve it, if possible. In practice, this does not appear to be an effective or practical method of resolving a request for immigration-related review or redress.

B. Suggested Administrative and Operational Improvements

The adoption of a specific protocol for immigration-related redress requests—available to business travelers, their employers, and their counsel—would improve the efficiencies of CBP's redress and review of immigration matters. AILA recommends the following improvements:

Establishing local subject-matter experts and leveraging local expertise to review admissions decisions

In addition to training all officers on immigration issues and adjudications, AILA encourages DHS to assign a supervisory officer who has undergone additional training and has significant field experience with immigration adjudications to serve as a subject-matter expert at each major Port of Entry (or at least on a per-Field-Office basis). Increased training and centralization of authority to review immigration issues would better equip CBP to establish and maintain agency expertise in immigration, promote accurate decisions, and help achieve DHS's goal of optimal operational consistency. Where novel or unusually complex issues arise, subject-matter experts could confer with CBP counsel and share the results of their research with other CBP immigration experts nationwide. Having local subject-matter experts review redress requests in their local jurisdictions would also provide the added benefit of quality control by identifying patterns and specific areas of training needed on particular immigration

issues at local Ports of Entry. Local experts could also help CBP to identify and become familiar with particular legal issues affecting different industries and different U.S. companies in local jurisdictions.

Condoning procedures and methods of communication between CBP and the public

To achieve the goal of facilitating lawful business travel and making consistent, accurate decisions, there must be improved communications between CBP and travelers, U.S. companies petitioning to sponsor foreign nationals for work, and their counsel. Currently, there are no set procedures for counsel to speak in advance with CBP officers who handle business adjudications at the Port of Entry, and there is no assurance that U.S. companies or their counsel may speak with CBP officers before sponsoring a foreign individual for U.S. work authorization or after issues or problems arise with business immigration adjudications at a Port of Entry. To achieve the goals of the Beyond the Border Action Plan, AILA recommends that CBP formally condone communications between officers and petitioning U.S. companies, applicants for admission, and counsel.

All too often, the inspection and admission process for business travelers is perceived as an adverse, intimidating situation, where applicants refused entry are perceived as immigration violators or threats to U.S. security. Recognizing that foreign business travel is integral to growth of the U.S. economy, CBP must make efforts to be a better partner and work together with U.S. business interests to facilitate the admission of foreign businesspeople. This must include established, open lines of communication to discuss and attempt to rehabilitate unwarranted denials of admission.

Creating SOPs for transparency and timely release of written records and other adverse information to travelers, sponsoring U.S. companies, and their representatives

After a business traveler is denied entry, the first step for the traveler or the sponsoring U.S. company is usually to gather information about the denial to decide whether or not to seek redress. In many cases, the basis for denial is unclear because there is no written record of the proceeding, or the traveler is not given a copy of pertinent documentation or notes regarding denial. U.S. businesses and their counsel frequently have problems when attempting to communicate with CBP about a denial. Even if communication is established with a particular CBP officer or supervisor at a Port of Entry and a clear strategy is agreed upon to bring additional documents to rehabilitate the application for admission, this is far from a guaranteed solution to achieve redress. In fact, there is often little continuity between different CBP officers at the Port of Entry, and upon re-presentation of an application, a second reviewing officer may identify additional, completely different deficiencies or disagree that the new documentation overcomes the previously identified deficiency. All of these problems fundamentally stem from breakdowns in communication.

To overcome these problems, AILA would suggest that CBP release as much written information as possible regarding denials of business traveler admission directly to the traveler at the time of denial. Such adverse information should also be made available in a timely manner, upon request, to U.S. companies with an interest in the traveler's admission, as well as legal counsel for both travelers and companies. Sharing of this information with all interested parties will help ensure that redress requests to CBP are fully informed and focused on the appropriate legal issues, which will make CBP's review of these requests more efficient. Releasing written information regarding denials will also help to ensure

quality control of CBP decisions and will facilitate identifying and correcting errors in admission in a straightforward manner.

V. CONCLUSION

AILA values CBP's consideration of these comments on the immigration-related points of the Beyond the Border Action Plan. AILA would be happy to provide assistance with training materials, revisions to administrative field manuals, or any other initiatives with which CBP desires stakeholder participation. We look forward to continuing to work with CBP on national and local levels throughout the implementation of the Beyond the Border Action Plan to facilitate and improve processes for lawful business travel to the United States.