Chapter 17: Inadmissible Aliens

References:

INA: Sections 212, 235, 240, 241.

Regulations: 8 CFR 212, 235, 240, 241.

17.1 Deferred Inspection. (Revised 5/16/05; CBP 9-05)

(a) General. A deferred inspection may be used when an immediate decision concerning admissibility cannot be made at a port-of-entry (POE) and the officer has reason to believe that doubts about the alien's admissibility can be overcome through:

- presentation of additional evidence;
- further review of the case (including perhaps a review of an existing A file);

- the posting of a maintenance of status and departure bond; or
- other similar action that can only be conducted at the onward location.

In such cases the inspecting officer shall defer the inspection to the office having jurisdiction over the area where the alien will be staying. Deferred inspections may be necessary to review an existing file or some other documentary evidence essential to clarifying admissibility. The inspecting officer shall defer for a specific purpose, and not as a way to transfer a difficult case to another office. The inspecting officer should normally only use deferrals when it appears the case would probably be resolved in the alien's favor, with limited exceptions. The officer shall not defer an alien who is not expected to establish his or her admissibility. Before an alien is deferred, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

When deferring an alien, the inspecting officer shall query at a minimum the IDENT, SQ11, Central Index and IAFIS, if available, databases in order to determine if any adverse information exists that would preclude the alien being paroled into the United States for deferred inspection and to provide additional information regarding the case. The deferring officer shall note the results on Form I-546, Order to Appear for Deferred Inspection as noted below.

The deferring officer should take the following factors into consideration when making a decision on whether to defer the inspection:

- The likelihood that the alien will be able to establish admissibility;
- The type of documents lacking, and the ability to obtain necessary documentation;
- The alien's good faith efforts to obtain necessary documents prior to arrival at the POE;
- The verification or establishment of the alien's identity and nationality;
- Age, health, and family ties;
- Other humanitarian considerations;
- The likelihood that the alien will appear;
- The nature of possible inadmissibility (i.e. criminal history, previous violations, etc.); and,
- The potential danger posed to society if the alien were to be paroled.

If the alien is clearly inadmissible or may pose a security risk or danger to society, the officer shall not defer the inspection. Instead, the officer shall place the alien in removal proceedings or allow him or her to withdraw his or her application for admission. For information regarding clearance of certain air cargo crewmembers, see Chapter 22.5(f)

(b) Deferral Procedures.

(1) Authorization: The responsibility to authorize a deferred inspection is delegated to the level of port director, assistant port director, or chief inspector at the GS-13 level and above. Express approval from the designated official is required before any inspection can be deferred. Current field guidance on approval authority can be found in CBP policy memorandum "Delegation of Immigration Authority Under Customs and Border Protection (CBP) (T# 03-0495)" dated May 22, 2003 and Exercise of Discretion – Additional Guidance, dated July 20, 2004.

(2) A-file: If an A-file does not exist, the deferring officer shall open one. To determine if an A-file exists, query the Central Index System. If there is an existing A-file, the deferring officer should indicate the file number and files control office on the Form I-546 so that the onward office can locate or request the file before the alien appears. In the event of an existing A-file, the deferring officer shall place all documentation in a temporary "T" file (unless the deferring officer has access to the A-file itself). The deferring officer shall forward the A-file or T-file containing the Form I-546 to the onward office within 24-hours of the scheduling of the deferred inspection.

(3) Each applicant whose inspection is deferred shall be photographed and fingerprinted on Form FD-249. Only one set needs to be completed. The set of fingerprints shall be maintained with the other information related to the alien and forwarded to the onward office in the A-file. This set of fingerprints is kept in the A-file or T-file (until consolidated with the A-File) and used if the alien fails to appear for his or her scheduled deferred inspection.

(4) Form I-94: Parole the applicant for a brief period, generally not to exceed 30 days, sufficient for the paperwork to arrive at the onward office and for the applicant to obtain any necessary evidence to establish admissibility (additional guidelines related to parole can be found in Chapter 16.1 of this field manual).

Stamp the departure and arrival portion of the Form I-94, with a parole stamp and endorse to indicate:

- Date to which deferred/paroled
- "DE, Deferred Inspection" (Purpose)
- Deferring port code
- Action date
- The officer's admission stamp number
- Onward office code

Place the alien's right index fingerprint on the reverse of the departure portion of the Form I-94.

(5) Deferred Inspection Documentation. All individuals scheduled for a deferred inspection are to be enrolled in the Enforcement Tracking System (ENFORCE). Generally, deferred inspections are documented on a Form I-546 and a Form I-259, Notice to Detain, Remove or Present Alien, if appropriate. General guidelines for creating a deferred inspection record in ENFORCE are as follows:

(A) Complete the Biographical Screen; an A-number is required. When finished, click on the Apprehension Screen.

(B)Apprehension Screen:

- Record the documents presented and arrival information.
- The Arrival/Departure Form I-94 number is mandatory.

- Click "Charges" then record the section of law and description of the inadmissibility.
- Record the U.S. and foreign address fields.
- Capture as much information as possible on the remaining tabs i.e. relatives, work information, scars etc.

(C) Select "Forms", then generate the forms necessary to document the deferred inspection.

i. Form I-546 Data Collection Screen: A deferred inspection places additional unscheduled work on the onward office. Appearance for deferred inspection may place additional burdens on the applicant who may, in many cases, be required to spend considerable time and money to comply with the required deferral procedures. Ensure that the information provided to the onward office is sufficient to allow the onward office to complete the deferred inspection in a single appearance.

ENFORCE contains a table of all deferred inspection sites. To retrieve the list, type in the first three-letters of the desired deferred inspection location or scroll through the alphabetical list in the "Address (Site)" data entry field. When selecting the "deferred inspection" disposition category, ENFORCE will display only deferred inspection sites in the "Reporting Address" drop down menu. Specific scheduling information such as hours and days of operation, telephone number and zip code are not encoded in the table. Some local offices conduct deferred inspections only on certain days of the week, or during certain hours, and may have specific room numbers for deferred applicants. Therefore, all secondary stations at POEs are to have current information on hours of operation, addresses and telephone numbers of CBP offices that handle deferred inspections available to verify scheduling information. Refer to http://cgovstaging/xp/cgov__Stage/toolbox/contacts/deferred_inspection/ for a complete listing. When scheduling the deferred inspection, identify a specific reporting date and a time block, rather than a specific time. There may be instances where the applicant is required to call the deferred inspection office directly to schedule an appointment. All individuals scheduled for a deferred inspection are to be given the telephone number of the onward office's deferred inspection unit.

The recommending officer must complete the "Detail" block in the following manner:

- Ensure that the information is complete and accurate for the inspector at the onward office by specifically stating the purpose of the deferral;
- Identify any documentation that the applicant is expected to produce;
- Record the results of the database queries;
- Annotate the name and title of the official that authorized the deferred inspection;
- Record the telephone number of the deferred inspection office: and,
- Identify the FCO of the existing A-file, if available.

ii. Form I-259 Data Collection Screen: The creation of the Form I-259 is required for deferred inspections created at the air and sea ports-of-entry. Form I-259 shall be served on the affected carrier or on the captain of a private aircraft or vessel. Generally,

the CBP Officer should select the fourth block "Notice of potential liability under section 241(c), (d), or (e) of the Act". In the event the alien is formally ordered removed, an amended Form I-259 should be created by checking the second block "Notice to Remove the Alien from The United States on __ at __", inserting the appropriate date and POE. The amended Form I-259 should be issued to the carrier responsible for removing the alien to the last port of embarkation prior to arrival in the United States. Follow local guidelines and procedures for authorization to detain an alien for removal.

iii. Q & A: Depending on the complexity of the case, the deferring office may wish to capture additional information using a question and answer format.

(E) Print Forms:

- Review the data for accuracy.
- Place a legible parole stamp in the "Details" block of the applicant's copy of the Form I-546. Endorse in the same manner as the Form I-94, as described above.
- Attach copies of the amended Form I-259 to the Form I-546 in the A-file or T-file.
- The CBP Officer processing the deferred inspection is to sign the line identified as "Signature of Recommending Officer".

The supervisory CBP Officer will verify that the details on the forms are correct and sign the Form I-546 in the space provided.

(F) Return to the IDENT screen and perform a search and enroll. Do not book the individual in IAFIS.

(6) Close Out:

(A) Verify that the applicant understands what documentation is necessary to overcome the inadmissibility when appearing for the deferred inspection. Prior to departing the secondary processing area, the applicant shall be given:

- the departure section of the Form I-94
- the appointment copy of the Form I-546 with a specific reporting date and a time block, rather than a specific time. In some instances, the applicant will need to contact the deferred inspection office to schedule the appointment.

(B) The deferring officer shall complete the Interagency Border Inspection System (IBIS) secondary screen indicating a deferral. In the remarks section, enter the office deferred to, date of inspection, and reason for deferral.

(C) A-file/T-file: The deferring officer shall include all forms generated in the A-file or T-file along with any other documents relevant to the inspection. The A-file or T-file is to be forwarded to the onward office within 24 hours of scheduling the deferred inspection. Follow local procedures for deferrals within the same field office.

(D) Reporting Requirements: The Form G-22.1 should be completed to indicate the

category and reason for the deferred inspection.

(E) Retention Requirements: A copy of Form I-546 shall be maintained at the deferring office until the ENFORCE record reflects that the case has been completed. Once completed, the deferring office may shred/destroy the original paperwork. POEs are responsible for monitoring the cases deferred to an onward office by reviewing the results of the deferred inspection in IO-95 or ENFORCE.

(c) Processing a Deferred Inspection at the Onward Office. The inspecting officer at the onward office should have received the deferral paperwork in advance of the applicant's appearance. It is the responsibility of the onward office to locate and request an already existing A-file, which should be reviewed prior to the applicant's appearance.

- If the applicant is found admissible, a new Form I-94 shall be executed using the office symbol of the onward office and the current date as the date of admission. The officer should ensure that the name, date of birth and country of citizenship written on the new Form I-94 is exactly the same as the information recorded on the Form I-94 issued at the time of the deferred inspection.
- If the inspecting officer concludes that the alien is inadmissible, the officer shall complete processing according to appropriate guidelines, which can be found in Chapters 17.2 through 17.17 of this field manual.

Upon completion of the deferred inspection, use IO-95 to create a new record within IBIS to show the deferred inspection results. Indicate the disposition on the Form I-546 included in the A-file. Forward the original deferred Form I-94 departure section and the new arrival section to the recipient indicated in Appendix 15-8 for data entry, if required. Record the final disposition of the deferral in ENFORCE. Query by event number, then record the outcome of the deferred inspection in the disposition data entry field located in the Form I-546 Data Collection Screen.

The Form G-22.1 should be completed to indicate the disposition of the deferred inspection. The disposition shall be noted on the Form G-22.1 under other (PORT = Other) secondary inspections operation report, complete other columns as appropriate.

(d) No Shows. The onward office is to monitor the cases referred for a deferred inspection. Cases should not be pending longer than 30 days after the expiration of the scheduled appointment, unless the applicant has requested an extension. If an alien fails to appear for his or her deferred inspection, a Form I-862, Notice to Appear shall be executed using the information listed on the Form I-546 and mailed to the address provided. All information related to the case shall be added to the A-file. A lookout must be posted in IBIS. All aliens who have lookouts posted shall be reported on the G-22.1 under "IBIS lookout entered". Criminal penalties and the possible pursuit of a criminal warrant under 8 U.S.C. 1325 shall be pursued on a case-by-case basis. All related information shall be forwarded to the CBP Prosecutions Unit (CBP Enforcement Officers) and/or U.S. Immigration and Customs Enforcement to allow further follow-up of the case. All aliens who fail to appear and for whom prosecution is pursued shall be reported of the Form G-22.1 under "Prosecutable Cases Referred to INV". Query ENFORCE by event number, in the "disposition" data entry field located in the Form I-546 Data Collection Screen, to record the action taken.

(e) Attorney Representation at Deferred Inspection. At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant.

(f) Medical Deferrals. When deferring inspection for a medical ground of inadmissibility under INA Section 212(a)(1), consult with the Public Health Service (PHS) before permitting the alien to proceed. If the alien is required to submit to further medical examination prior to reporting to the onward office, return all medical documents including local PHS certification and x-rays to the applicant in a sealed envelope for presentation to the doctor, medical clinic, or PHS facility as instructed. If the alien is to report first to the onward CBP office, forward the medical documents with the deferral papers directly to the onward office.

17.2 Withdrawal of Application for Admission.

(a) General. A nonimmigrant applicant for admission who does not appear to the inspecting officer to be admissible may be offered the opportunity to withdraw his or her application for admission rather than be detained for a removal hearing before an immigration judge or placed in expedited removal. An alien cannot, as a matter of right, withdraw his or her application for admission, but may be permitted to withdraw if it is determined to be in the best interest of justice that a removal order not be issued. Before allowing an alien to withdraw, you must be sure that the alien has both the intent and the means to depart immediately from the United States. See section 235(a)(4) of the Act and 8 CFR 235.4.

Withdrawal is strictly voluntary and should not be coerced in any way. It may only be considered as an alternative to removal proceedings when the alien is not clearly admissible. Occasionally, POE workload, personnel resources, and availability of detention space may affect whether you will allow withdrawal or pursue removal proceedings before an immigration judge. However, in cases where the alternative to withdrawal is expedited removal, workload and detention space are less significant considerations.

In exercising your discretion to permit withdrawal, you should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be in the best interest of justice, or conversely, that justice would be ill-served if an order of removal were issued. In light of the serious consequences of issuing an expedited removal order, which includes a 5-year bar to re-entry, the decision of whether to permit withdrawal should be based on a careful balancing of relevant favorable and unfavorable factors in order to reach an equitable decision. Such factors might include, but are not limited to:

(1) The seriousness of the immigration violation;

(2) Previous findings of inadmissibility against the alien;

(3) Intent on the part of the alien to violate the law;

(4) Ability to easily overcome the ground of inadmissibility (i.e., lack of documents);

(5) Age or poor health of the alien; and

(6) Other humanitarian or public interest considerations.

An expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response. On the other hand, in a situation where the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa but has not concealed information during the course of the inspection, withdrawal should ordinarily be permitted. Where an immigration violation has not yet occurred, and the determination of inadmissibility is based on the alien's ignorance of permissible activities or on a judgment of the alien's future intent, the factors cited above should be carefully weighed in deciding whether to permit withdrawal or issue an expedited removal order. Where the travel documents presented are prima facie valid, you should consider whether the violation warrants the serious consequences of a formal removal. If the alien may readily overcome the inadmissibility by obtaining proper documents, the alien may be permitted to withdraw his or her application for admission and should also be appropriately advised of the necessary forms and requirements to overcome the grounds of inadmissibility.

Under section 222(g) of the INA, as amended by IIRIRA, when an alien has remained in the United States beyond the period of his or her authorized stay, the alien's visa is considered to be void, even though no action may have been taken to physically cancel the visa. In a case when an alien could not have been reasonably expected to know that his or her visa is void, but the alien is otherwise admissible except for the lack of valid nonimmigrant visa, withdrawal of application for admission may be considered. However, if the facts of the case indicate particularly egregious immigration violations, such as long-term or repeated previous overstays, unauthorized employment in the United States, or that the alien is again likely to remain beyond his or her authorized stay or otherwise violate his or her status, an expedited removal order may be appropriate.

An applicant who withdraws his or her application for admission is not considered formally removed and therefore does not require permission to reapply for admission to the United States. Once the reason for the inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States.

(b) Jurisdiction. Generally, a withdrawal will be taken at the port-of-entry or following a deferred inspection. However, there will be instances where a detained alien, prior to or during the expedited removal credible fear process, is permitted to withdraw his or her application for admission. Any INS officer involved in the continuing processing of an arriving alien may, after obtaining authorization in accordance with local procedures, offer withdrawal if the situation warrants. Withdrawal during the later stages of the expedited removal and credible fear process should be the exception rather than the normal course of action. All facts,

circumstances, and factors relating to the case should be carefully considered. In expedited removal cases, several units within INS may have already invested considerable time and resources in pursuing expedited removal of the alien. In order to preserve a unified expedited removal process and uniformity of decision, asylum officers may wish to consult with other units involved to obtain any additional information concerning the case which may affect the decision to permit withdrawal.

(c) Withdrawal Procedures. If, after obtaining supervisory concurrence in accordance with local procedures, you decide to permit an applicant to withdraw, complete the necessary paperwork. Once an applicant is granted permission to withdraw, prepare Form I-275, Withdrawal of Application for Admission/Consular Notification. The I-275 must clearly state the reasons for inadmissibility in the remarks block. A sworn statement should be taken and attached to the I-275. If the alien is inadmissible under section 212(a)(6)(C) or (7) and would have been subject to expedited removal if not permitted to withdraw, the sworn statement should be taken using Form I-867A&B. Check any appropriate boxes on the I-275. The alien must sign the I-275, acknowledging that the action is entirely voluntary. The alien should be given a copy of the I-275 and any sworn statement taken, unless the Form I-275 contains classified or sensitive information. Prepare and serve an I-259 on the appropriate carrier to effect removal. Complete the I-94, endorsing both sections with: "WD - Application for Admission Withdrawn. (Stamp number), (Port), and (Date)." On the reverse of the I-94, indicate the file number, if appropriate, in Block 20. In Block 26, under Itinerary/Comments, write the grounds of inadmissibility, and "I-275 served. To be removed via (flight number) on (date)". Also include removal flight information on the front of the departure portion of the I-94. Cancel the nonimmigrant visa, and note the visa page "22 CFR 41.122(h)(3)." In a case where the alien may, through ignorance, bad advice, or misinformation, have inadvertently arrived with inadequate documents or an improper visa, and there was no fraud involved and you are satisfied that the alien will depart in order to comply with admissibility requirements, a visa may be left intact for future use.

Prepare a packet in a sealed envelope for immigration officials in the country to which the alien is being returned, containing the alien's travel document and a copy of the Form I-275 or other relevant information that may be needed by the immigration officials in the ongoing country. Where practical, advise INS offices overseas by phone or fax of aliens moving through their jurisdiction. Forward the original of the I-275 and sworn statement to the consulate where the visa was issued. Route the arrival I-94 for data entry and deliver the departure I-94 to the carrier to be submitted with other departure I-94s for the outbound flight. Maintain a copy of all relating documents, including the pertinent passport pages and other evidence at the port of arrival for 6 months. Refer to Chapter 21.2 for special Canadian border procedures and to Chapter 17.15(f) for specific instructions relating to withdrawal of application for admission by minors.

(d) Return Transportation Arrangements. An alien who is permitted to withdraw must depart immediately from the United States, or as soon as return transportation can be arranged. If the alien arrived at an airport or seaport, arrange for departure on the next available transportation either back to the country where the alien boarded the flight or vessel, or to another country if the alien is entitled to enter that country. In instances where the alien is being returned to a third country through a foreign transit point, every possible effort must be made to ensure that

an immediate and continuous transit will be ensured. If the alien does not have either a return ticket or the carrier has not otherwise agreed to transport the alien, removal proceedings should be instituted. If the alien has an open ticket, make sure satisfactory confirmed return transportation arrangements are made. If the alien arrived at a land border port-of-entry, he or she is not permitted to enter the United States, and is simply returned to the contiguous territory from which he or she arrived.

(Chapter 17.2 revised 12/22/97; IN98-05)

17.3 Fraudulent Documents.

(a) General. Any passport, visa, alien registration card, or other document presented by an applicant for admission is potentially a counterfeit or altered document, a document procured by fraud or a genuine document being presented by an imposter. As document quality has improved, so has the ability of document vendors to create better quality counterfeits. Tools for detecting fraudulent documents are discussed in Chapter 34. A discussion of the Forensic Document Laboratory and other Intelligence support activities are contained in Chapter 32. The El Paso Intelligence Center (EPIC) can also be of assistance in detecting fraudulent documents. EPIC may be contacted in writing at: EPIC; 11339 SSG Sims St.; El Paso, TX 79908-8098; Att: ICS or by calling (915) 564-2000,. See Chapter 32 for further discussion of EPIC functions.

Once you have determined a document is fraudulent or is being presented by other than the rightful holder, in addition to processing the holder as an inadmissible alien, you must insure that information about the document is properly routed to INS Intelligence for dissemination to others. It is important that information be distributed promptly, since document vendors often produce multiple documents using the same techniques. In order to effectively identify such documents, one of the most valuable assets is current, accurate intelligence information. Local ports generally have one or more designated inspectors assigned as collateral intelligence officers to insure such information is properly routed to and from other officers.

Local ports tend to have patterns for the types of documents encountered which are most likely to be fraudulent. Birth and baptismal certificates, which have no national standards, are the most commonly counterfeited, altered, or improperly issued documents. Familiarize yourself with security checkpoints of documents regularly presented at your port-of-entry. (Revised IN98-13)

(b) Counterfeit or Altered Document. Alteration of documents occurs in several ways: changing data on a valid document to fit the description of the alien applicant, photo substitution, and page substitution are the most common. Counterfeiting of birth records and other similar documents is also commonplace, counterfeiting of entire passports happens less frequently. Some attempts are excellent, others fairly crude. Always examine documents with laminated photos, such as border crossing cards, outside any case or holder so you can feel any relamination. This is a good practice, even at land border primary locations. Familiarity with document alerts and passport studies provided by the Intelligence Division will also make

detection of this type of fraudulent document easier. Following are tips for passport examination.

- Examination of a passport begins with the cover. Look for the quality and clarity of printing, color, thickness and even spelling. Check the shape and cut of corners.

- Next inspect the inside pages for known watermarks and background printing, as well as any other known security checkpoints. Again, examine spelling and print quality. Check the alignment of pages and the shape and cut of corners. Perforations should generally be sharp, distinct and evenly aligned.

- Review the data page or pages of the document. Handwritten entries should be made with the same color ink, without overwritten or blotched entries. Typed entries should all be with the same typeface and consistency of ink.

- Examine the photo page for signs of double lamination, cuts in the lamination, excessive glue, or wrinkling. Inspect wet or dry seals overlapping the photo. Seals should be aligned and distinct. The seal impression on the reverse side of the page should match that of the front.

- Examine the page immediately opposite the photo page for grommet or staple indentations. Such indentations should match the grommet or staple attaching the photo.

- Examine the binding for jagged or enlarged stitching holes. Stitching should be evenly spaced.

(c) Genuine Document Presented by Imposter. Careful questioning of an applicant regarding the nature of the visit and the particulars of how the visa was obtained, and close scrutiny of the photo and biographic data on the travel document will assist you in determining if the bearer is the rightful holder of the passport or visa. Immigration officers have delegated authority, pursuant to 22 CFR 41.122(h) to cancel genuinely issued visas which have been removed from the original travel document or which are presented by other than the rightful holder. Whenever such action is taken, prepare Form I-275 to advise the issuing consulate.

(d) Genuine Document Obtained by Fraud. Among the more difficult tasks you face as an inspector is making a determination that a passport, visa or, other document issued by competent authority was based on a fraudulent application or agency error. While it is not possible for you to readjudicate the underlying basis of eligibility for every document presented, you should be aware of the general requirements for various immigration benefits and know what relevant questions to ask an applicant for admission when you become suspicious. As INS automated systems improve, you have at your disposal more information from agency files upon which to inquire. Access to INS automated systems is discussed in Chapter 31. Your observation of the applicant's demeanor and his or her responses to simple questions are the best tool for uncovering this type of fraud.

(e) H-1B Fraud Refusal Notification Report. Pursuant to Section 108 of the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313), when an H-1B petition is revoked because the alien obtained the H-1B visa through fraud or misrepresentation, the Service will recapture the H-1B visa number. Any revocation based on fraud will restore an H-1B visa number to the total number of aliens who may be issued a visa in the fiscal year in which the petition is revoked. The H-1B Fraud Refusal Notification Report (Appendix 17-7) shall be used in all cases where an H-1B visa fraud determination has been made at a Port-of-Entry. A copy of Form I-275, Withdrawal of Application for Admission/Consular Notification, shall be included to further indicate the basis for the action. This information substantiating an incident of H-1B fraud shall be forwarded, via facsimile, to the service center where the petition was approved. That service center will notify the petitioner of the revocation and will update the computer system to correctly reflect the H-1B visa numerical limitation change.
(Added IN01-14)

17.4 False Claims to U.S. Citizenship.

(a) General. You must always be alert to the possibility that an alien may attempt entry by falsely claiming United States citizenship. The claim may be either an oral claim or one supported by an authentic or fraudulent document. The best defense against false claims to U.S. citizenship is your own instinct as an inspector. The most obvious clues in detecting a false claim are nervous actions or reactions on the part of the applicant or language patterns that don't fit the claim to citizenship. [redacted] If the applicant claims recent naturalization, that may be sufficient to convince you he or she is a U.S. citizen or it may prompt further questions, or a check of the Central Index.

Become familiar with the persons at your port who can assist you in the questioning of a suspected false claim. A native Spanish speaker, familiar with various local accents and idioms, is more likely to quickly detect, for example, a Central American claiming birth in Puerto Rico. Learn the procedures used by various local officials involved in issuing citizenship documents; request original or certified copies of documents which are presented.

A word of caution -- Never refer a person to secondary as a false claim simply because the person is belligerent, disrespectful or suspected of being under the influence of alcohol or other drugs. Refer him or her when you have some reason to believe the person is an alien attempting to commit a fraud.

A new ground of inadmissibility for false claims to U.S. citizenship was added to §212(a)(6)(C)(ii) of the Act by IIRIRA, for representations made on or after the date of enactment, September 30, 1996. Aliens who make a false claim to U.S. citizenship therefore are subject to the expedited removal provisions of §235(b)(1) of the Act. See Chapter 17.15 for expedited removal procedures.

(b) Procedures. Once you have made a determination that an applicant for admission is making an false claim U.S. citizenship, process the case as an expedited removal case or permit withdrawal of application for admission. In order to prevent the improper removal of a U.S. citizen without hearing or review, a provision was added to the regulations in 8 CFR 235.3(b)(5) to provide for a review of the expedited removal order by an immigration judge. As with any claim to U.S. citizenship, every effort should be made to either verify or disprove the claim prior to proceeding with issuance of a removal order. Only those cases where you are absolutely not satisfied that the person is a U.S. citizen should result in a removal order. To refer the case to a judge, use Form I-863, executing block 4 of the form. In cases of claims supported by documentation, in addition to the above, complete Form G-329, Documented False Claim to Citizenship, and forward it to the appropriate address listed in Appendix 15-8. Attach the original documents, unless they are being used as evidence, a complete set of the alien's fingerprints on Form FD-249, and a photograph. If original documents are needed for other purposes, attach a photocopy. If a genuine document is being presented by an imposter, obtain, if possible, biographic and family information relating to the person to whom the document relates. [Detailed instructions on preparing Form G-329 are contained in Chapter 32.6.]

17.5 Waivers.

(a) General. The grounds of inadmissibility applicable to aliens are established by §212 of the Act. There are a series of exemptions and waivers for various grounds of inadmissibility. Exemptions refer to statutory or regulatory constructions whereby certain classes of aliens are not subject to inadmissibility, under specific circumstances, based on certain general provisions relating to inadmissibility. No application or adjudication is needed when an alien is exempt from a ground of inadmissibility. For example, many aliens are, by regulation, exempt the general passport and visa requirements. Generally, waivers refer to specific applications, filed individually, and adjudicated to remove temporarily or permanently one or more specific grounds of inadmissibility. Waivers are available to immigrants pursuant to sections 211(b), 212(a)(3)(D)(iv), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(e), (g)(1), (g)(2), (g)(3), (h), (i), and (k). Waivers are available to nonimmigrants under sections 212(d)(1), (d)(3), (d)(4), and (l). Additionally, certain qualifying aliens are eligible for automatic waivers under sections 212(m) and (o). No application or fee is required for such automatic waivers. There are a variety of situations involving inspection of aliens requiring waivers of inadmissibility. In many instances the need for a waiver has been determined and adjudication of a waiver has been completed before the alien arrives at the port-of-entry. In such cases, the nonimmigrant visa will be noted or the alien will possess a notice of action approving the waiver. In other instances, the need for a waiver will be determined during the inspection process and the matter can often be resolved during secondary inspection.

(b) Permanent Residents Without Valid Alien Registration Documents. During the inspection process, you may be required to process a waiver under section 211(b) of the Act if a returning resident is not in possession of his or her alien registration card or reentry permit. If the applicant is otherwise admissible, complete Form I-193, Application for Waiver of Passport and/or Visa, collect the required fee, stamp the I-193 and passport with your admission stamp

and endorse them "211(b)." Before approving such a waiver, query the applicant's status in Central Index to verify the validity of his or her lawful permanent residence. See Chapter 13.2 for a discussion of this and other options for admitting returning residents. If you deny a waiver under section 211(b) of the Act, the application may be renewed in removal proceedings before an immigration judge.

There are a number of precedent decisions relating to section 211(b) waivers. In *Matter of Abdoulin*, 17 I&N Dec 458 (BIA 1981), the Board ruled that denial of a waiver by the district director did not constitute a definitive adjudication of abandonment of permanent residence. In *Matter of Muller*, 16 I&N Dec. 637 (BIA 1978), the Board discussed factors to be considered in determining the issue of abandonment. Other relating precedents relating to abandonment of residence and entitlement to a waiver include: *Matter of Davis*, 16 I&N Dec. 514 (BIA 1978); *Matter of Delgadillo*, 15 I&N Dec. 395 (BIA 1975); *Matter of Galvan,* 14 I&N Dec. 518 (BIA 1974); *Matter of Castro*, 14 I&N Dec. 492 (BIA 1974); *Matter of Montero*, 14 I&N Dec. 399 (BIA 1973); *Matter of Wu,* 14 I&N Dec. 290 (Regional Commissioner 1973); *Matter of Hoffman-Arvayo*, 13 I&N Dec. 750 (BIA 1971); *Matter of Wighton*, 13 I&N Dec. 683 (BIA 1970, 1971); *Matter of Salviejo,* 13 I&N Dec. 557 (BIA 1970); *Matter of Escalante*, 13 I&N Dec. 223 (BIA 1969); and *Matter of Vielma-Ortiz*, 11 I&N Dec. 414 (BIA 1965).

(c) Waivers for New Immigrants. An alien inadmissible from the U.S. under section 212(a)(5)(A) or (7)(A)(i), who is in possession of an immigrant visa may, if otherwise admissible, be admitted by applying to the district director at the port-of-entry at which the alien arrived for a waiver on Form I-193, under the conditions described in §212(k) of the Act and 8 CFR 212.10. This waiver is available to correct such technical defects as when a consular official has placed an improper classification symbol on the visa or where classification has changed due to the alien turning 21 years of age subsequent to visa issuance. It is available both at a port-of-entry at the time of initial admission or **nunc pro tunc**. No fee is required. Adjudicate the application and attach the form to the immigrant visa packet. If denied, application for a section 212(k) waiver may be renewed before an immigration judge in removal proceedings.

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(5)(A) include: *Matter of Morgan*, 13 I&N Dec. 283, (BIA 1979); *Matter of Ortega*, 13 I&N Dec. 606 (BIA 1970); *Matter of Ulanday,* 13 I&N Dec. 729 (BIA 1971); *Matter of Paco*, 12 I&N Dec. 599 (BIA 1968); *Matter of Thompson,* 13 I&N Dec. 1 (BIA 1968); *Matter of Welcome*, 13 I&N Dec. 352 (BIA 1969); and *Matter of Rodriques*, 13 I&N Dec. 746 (BIA 1971).

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(7)(A)(i) include: *Matter of Pierce,* 17 I&N Dec. 456 (BIA 1980); *Matter of S- B-*, 7 I&N Dec. 298 (BIA 1956); *Matter of Alarcon*, 17 I&N Dec. 574 (BIA 1980); and *Matter of Khan,* 14 I&N Dec. 122 (BIA 1972).

A waiver of the passport requirement, using the I-193 procedure described above, is also provided in 8 CFR 211.2. Other waiver provisions applicable to new immigrants are normally adjudicated in advance. Approval of such waivers should be indicated by the consular official on the immigrant visa, OF-155A.

(d) Nonimmigrants.

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

(2) Section 212(d)(3)(B). Inadmissible nonimmigrants who are already in possession of a nonimmigrant visa, or who are exempt the requirement for a visa, must apply for authorization under section 212(d)(3)(B) of the Act to the district director having jurisdiction over the intended port-of-entry. Application is made on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. Adjudication procedures are discussed in detail in Chapter 42 of the *Adjudicator's Field Manual.* If such application has been approved, the alien will be in possession of Form I-194, Notice of Approval of Advance Permission to Enter as a Nonimmigrant. If otherwise admissible, enter the section 212(d)(3) authorization information, the file number, and the FCO code on the reverse side of the Form I-94, along with any conditions or restrictions.
[IN 02-08]

(3) Section 212(d)(4)(A) Waiver of Passport and/or Visa.

(A) An authorizing official, as designated in the memorandum Delegation of Immigration Authority Under Customs and Border Protection (CBP) (TC#03-0495), dated May 22, 2003, has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an unforeseen emergency prevented him or her from acquiring the appropriate passport or visa. Currently, this authority is delegated to the port director at the GS-13 level and above. See generally Matter of LeFloch, 13 I. & N. Dec. 251, 255-56 (BIA 1969) 212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); Matter of V, 8 I. & N. Dec. 485, 485-87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). The term "unforeseen emergency" as used in 8 CFR 212.1(g) generally means:

(i) an alien arriving for a medical emergency;
(ii) an emergency or rescue worker arriving in response to a community disaster or catastrophe in the United States;
(iii) an alien accompanying or following to join a person arriving for a medical emergency;
(iv) an alien arriving to visit a spouse, child, parent, or sibling who within the

past 5 days has unexpectedly become critically ill or who within the past 5 days has died; or

(v) an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

(B) In a case where a section 212(d)(4)(A) waiver is under consideration, the alien should complete Form I-193 and remit the appropriate fee. In the remarks block of the Form I-193, the immigration officer shall precisely describe the unforeseen emergency that prevented the alien from obtaining the proper documentation before arriving in the United States. In addition, the officer shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Mark "n/a" in the block designated for Department of State concurrence on the Form I-193. Where an authorizing official favorably adjudicates an application for a section 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission stamp. The admitting officer shall also make the same notation on the reverse side of both the arrival and departure portion of Form I-94.

(C) An authorizing official may also, on a case-by-case basis, approve a 212(d)(4)(A) waiver should individual unforeseen emergency circumstances arise that do not fall within the scope of an unforeseen emergency as described above. This authority shall also apply to those individuals who are officially acting in the capacity of the port director (GS-13 and above) or higher level.

(D) The official who authorizes a waiver under paragraph (d)(3)(C) of this chapter (i.e., the previous paragraph) shall maintain a log that precisely describes the emergency that prevented the alien from acquiring the required documents before arriving in the United States. In addition, before granting any such waiver, the authorizing official shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Finally, the official who authorizes a waiver under paragraph (d)(3)(C) of this chapter shall adhere to the procedures identified in paragraph (d)(3)(B) of this chapter regarding the execution of the Form I-193 and marking the passport.r regarding the execution of the Form I-193 and marking the passport.

(e) Headquarters Responsibility for Certain Waivers under Section 212(d)(3)(A) of the Act.

(1) General. Oversight of waivers of inadmissibility for nonimmigrants is the responsibility of the Inspections Program. The Act stipulates that the Secretary of State may recommend

the waiver and the Attorney General may grant or deny. Normally, the recommendations are made to the Service at the overseas districts. Certain categories, however, are elevated to the "seat of government" level as detailed below. [See 8 CFR 212.8.]

In making the recommendation to the Service, Section 40.111 of the Foreign Affairs Manual (FAM) instructs State Department officers to include:

- The relevant humanitarian, political, economic or public relations factors;
- a statement (where applicable) that DOS is satisfied the alien has a residence abroad which he or she has no intention of abandoning;
- a statement that the alien is properly classified as a nonimmigrant;
- the officer's precise recommendation and the reasons therefor.

FAM guidance to consular officers specifies that a waiver may be requested (except as precluded by statute) for any nonimmigrant alien whose presence would not be detrimental to the United States and that the law does not require that recommendations be limited to exceptional, humanitarian or national interest cases. It further states: "Thus, while the exercise of discretion and good judgment is essential, generally, consular officers may recommend waivers for any legitimate purpose such as family visits, medical treatment (whether or not available abroad), business conferences, tourism, etc." It goes on, however: "In cases of ineligibility for other than security reasons, the consular officer must weigh additional considerations as recency and seriousness of the crime or offense, type of disability, reasons for the proposed travel to the United States and the probable consequences, if any, to the public interests of the United States."

Although the FAM provides guidance for State Department officers, the Service is not bound by it. The inspector should consider all of the above and also consider that the Congress has deemed these aliens inadmissible to the United States. In considering the waiver weigh the benefit, if any, to the United States should the waiver be granted. In situations where the proposed visit is for the purpose of medical treatment, consider whether such treatment is available to the alien abroad. Granting of waivers of these grounds should not be routine and available just for the asking.

(2) Mandatory Referrals. Although any case may be referred to the Department of State Visa Office by a consular officer for consideration of a recommendation to HQINS, there are certain cases in which the FAM mandates the referral:

- Any case where it is requested by the alien or an interested party in the U.S. that it be forwarded;
- Any case where the consular officer knows or has reason to believe that pertinent considerations not available at the post may be available to or through the Department;

- Prior refusals;
- Any case where the alien's presence or activities in the U.S. might become a matter of public interest or of foreign relations significance;
- Any case in which the Department has mandated an advisory opinion be sought;
- The case of any alien who is a national of a country which the U.S. does not recognize or with which we have no diplomatic relations;
- The case of any alien not classifiable under INA Section 101 (a) (15) (A) or (G) but destined on official business to the United Nations;
- Cases of any SILEX or BUSVIS/SILEX alien and of certain CHINEX or BUSVIS/CHINEX aliens;
- The case of any Soviet applying for an I visa;
- Any case involving 212(a)(3)(B);
- Any cases in which the consular officer recommends a term of greater than one year.

(3) Limitations. Multiple entry waivers are not to be given to an alien who:

- Has a mental or physical disorder;
- Is a narcotic drug addict or a narcotic trafficker (multiples have been granted before in special cases with DEA/Customs/FBI involvement);
- Is afflicted with a communicable disease;
- Was convicted of a CIMT and is less than 5 years post-release;
- Prostitution related activity within 10 years of visa application.

(4) Silent Waivers. The majority of cases referred to HQINS involve either aliens involved with terrorism or illegal drug activity in which the Drug Enforcement Agency or another federal agency requests a "silent waiver" or some other special handling for cases in which the consular officer recommends greater than one year validity. In the terrorist-related cases, request the FBI position on the recommendation and consider any objections presented. If the objections of the FBI cannot be overcome to their satisfaction by travel restrictions or some other consideration, the case should be referred to the Department of Justice's Office of Intelligence Policy and Review (OIPR). In the drug cases, require

detailed information as to what the alien is expected to do and what benefit exists for the U.S. Do not accept simple assurances. If the requesting law enforcement agency is requesting the "silent waiver" to effect an alien's arrest, the alien to be arrested should be at such a significant level within the criminal organization that the arrest materially affects it, or there should be some other significant gain in the case to justify the expense to the United States.

In all cases, place any restrictions that you feel are necessary. Some examples might be: geographical (4 block radius of the U.N.); port-of-entry (arrive at JFK only); time (3 days); advance itinerary (usually requested by the FBI), etc. on a case-by-case basis.

[redacted]

(Paragraph (e) added by IN97-08)

17.6 Preparing Removal or Prosecution Hearings.

(a) General. If you determine that an alien is inadmissible, and the grounds of inadmissibility cannot be resolved readily and the alien does not elect to withdraw (or is not afforded the opportunity), you must prepare necessary paperwork for a removal proceeding before an immigration judge or for prosecution. Most often, an alien will be detained or paroled until the hearing date. An alien who is inadmissible under section 212(a)(6)(C) or (7) is subject to the expedited removal provisions of section 235(b)(1) and should be processed in accordance with Chapter 17.15. If such an alien is also being charged with additional grounds of inadmissibility, follow the procedures below.

(b) Preparing the Case. There are a number of steps to be taken to refer a case for a removal hearing or for prosecution. Complete, accurate case preparation is extremely important. Prepare cases for prosecution according to guidelines set by the local U.S. Attorney. The following steps must be taken in each case referred to an immigration judge for removal proceedings:

(1) Take a complete sworn statement from the alien, concerning all pertinent facts. Collect any additional evidence relevant to the case which is discovered during the inspection process. Use Form I-263A as a jurat to close the statement. Provide a copy of the statement to the alien and retain copies for the Service file and record of proceedings.

(2) Prepare three copies of Form I-862, Notice to Appear. If the alien is being held in Service custody, indicate that fact and location of the facility where the alien is detained in the address block. If the alien is not being held in Service custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33 to report any change of address. If the aliens's mailing address is different than

the physical address, include both. Check the first box and provide a brief narrative description of the facts of the alien's arrival and inadmissibility under description of charges. Standard language for all charges under section 212(a) is available through most automated forms systems used by the Service. Fill in the complete citation for the provision of law (e.g. 212(a)(2)(A)(i)(I)) under which the alien is being charged. Enter the complete address of the appropriate Immigration Court in the space provided. The Notice to Appear must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing using the EOIR ANSIR system, or following established local procedures. In unusual situations when a hearing date and time cannot be obtained, such as when there is a computer system outage, indicate " to be set" in the appropriate data field. Advise the alien, in a language that he or she can understand, of the time and place of the hearing and of the consequences of failure to appear. Sign and date the I-862. Normally, a hearing may not be conducted sooner than 10 days after service of the Notice to Appear. If the alien wishes to waive this time period and have an immediate hearing (or as soon as one can be arranged), have the alien sign the section entitled "Request for Prompt Hearing." Serve the I-862 on the alien and provide him or her with a current list of organizations and programs prescribed in 8 CFR 292 which provide free legal services.

Serve one copy of the I-862 on the alien, unless the alien is to be released and deferred to an onward office, in which case the service is accomplished by the onward office.

(3) Photograph and fingerprint the alien on FD-249 fingerprint cards (three sets). Distribution of the fingerprints should be made in accordance with the procedures set forth in chapter 18.9(c). Be sure to properly code the fingerprint cards with the proper United States Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

• 18 U.S.C. 1544	Photo substitutions
• 18 U.S.C. 1546	Counterfeit immigrant visa
• 8 U.S.C. 1306	Counterfeit INS documents, such as alien registration
• 18 U.S.C. 911	False claims to U.S. citizenship (imposters, photc substitution of U.S. passport)
• 18 U.S.C. 1001	Other (fraudulent documents, imposter, no documents, etc.)

(4) If the alien is to be detained, consult 8 CFR 236.1(e) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this **not** be done. Notify the alien that he or she may communicate with a

consular official.

(5) Complete local procedures for authorization and arrangement of detention, if appropriate. If the alien is being detained pending the removal hearing, complete a Form I-94 for NIIS entry notated: "I-862 served - Detained at _____for removal proceedings on (date). (Date), (Place), (Officer)." Section 235(b)(2) of the Act, as amended by IIRIRA, provides the detention authority for arriving aliens placed into removal proceedings under section 240. This provision is functionally equivalent to the old 235(b), and does not require issuance of a Warrant of Arrest.

(6) In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required prior to the hearing. If there is no admission, consider forwarding the fraudulent document to the Forensic Document Laboratory (FDL) for analysis. [See Chapter 32 for details on using FDL services.]

(7) Search for existing Service records in CIS and other appropriate automated systems. If an "A" file exists, create a temporary file and request the permanent file for the hearing, otherwise, open a new file. [Chapter 31 contains detailed information on use of Service data bases.]

(8) At air and seaports, serve the carrier with Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to advise the carrier of potential liability for removal and to order the carrier to remove the alien when the removal process is finished.

(9) If the alien is to be released for an removal hearing at an onward office, complete a Form I-546, Notice to Appear for Deferred Inspection, following procedures set forth in Chapter 17.1. In such cases, the I-862 will be served by the onward office. Although ordinarily not an option, this procedure is may be appropriate for determining whether to institute removal proceedings in cases involving returning permanent residents.

(10) Prepare two identical sets of all documents to be submitted as evidence: one for the Service file, and one for the Immigration Court.

(c) Post-hearing actions.

(1) Alien ordered admitted. Complete the inspection process as you would any other admission, including processing a new Form I-94, noting the remarks block "ordered admitted by immigration judge". Collect any prior departure I-94, stamp the reverse with your admission stamp and forward for data entry.

When the immigration judge orders the admission of a detained alien or an alien at a land border, and the decision is not final because the Service's appeal time has not tolled, an appeal has not been decided, or the decision has been certified to the Board of Immigration Appeals, release and parole the alien unless particular facts, such as an alien's serious criminal background, warrant other action.

(2) Alien ordered removed. Complete and serve Form I-296, Notice to Alien Ordered Removed/Departure Verification, on the alien, checking the appropriate box to indicate the duration of the penalty imposed and the reason for such penalty. The penalty for an aggravated felony may be imposed on such felon, even if the alien was not charged as being inadmissible as an aggravated felon in this proceeding. Forward one set of fingerprints on Form FD-249 to the FBI. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on the Service copy of the I-296, the alien should sign the form, and the particulars of the departure entered on the form for retention in the file. Cancel the alien's visa or border crossing card, if appropriate, and complete and distribute Form I-275 as described in Chapter 17.2. Note the passport with the file number and action taken, for example: "Ordered Removed 12/1/97 NYC/Section 212(a)(2)(A)(i)(I)". Forward a copy of the removal order with the I-275 to the Department of State. Prepare a new I-94, endorse it with a parole stamp and note the stamp "For removal from the U.S. by (carrier name)", the date of removal, stamp number, port, and action date. Serve Form I-259 on the affected carrier, if appropriate.

In the case of an alien with an immigrant visa ordered removed, the immigrant visa packet, noted by the immigration judge, is retained in the file of the Executive Office for Immigration Review. Other procedures outlined above are the same.

(3) Alien permitted to withdraw during removal hearing. In a case where the immigration judge permits the alien to withdraw his or her application for admission prior to conclusion of a hearing, follow procedures described in Chapter 17.2.

(d) Removal proceedings involving lawful permanent residents.

(1) Meaningful Departure. If a returning lawful permanent resident appears inadmissible, first determine if he or she is an applicant for admission within the meaning of section 101(a)(13)(C) of the Act. See discussion in Chapter 13.

(2) Procedures. If you find that a lawful permanent resident is considered to be seeking admission and appears to have abandoned his or her permanent residence in the United States, there are several possible courses of action: deferred inspection, removal proceedings, nonimmigrant admission or parole and, occasionally, withdrawal of application for admission. In any case, temporarily lift, but do not destroy or return to the card facility, the Alien Registration Receipt Card (Form I-551). In instances where detention is not warranted, defer inspection for institution of removal proceedings, as described above in paragraph (b)(10) and Chapter 17.1. If you are going to schedule a removal hearing, follow applicable procedures above. In addition, issue a temporary I-551 in accordance with 8 CFR 264.5(g) and local procedures. Note the reverse of the temporary card: "Alien is scheduled for removal hearing - do not admit as LPR." Parole the alien for the time necessary to conclude the removal proceeding. Abandonment of residence is discussed in Chapter 17.10, below.

(3) If a lawful permanent resident appears to be inadmissible under section 212(a)(3)(A) (except clause (ii)), (B) or (C), notify your regional director, through the district director, of

the facts of the case.

(e) Proceedings Involving VWP Applicants Claiming Asylum. When the immigration judge denies asylum to a refused VWP applicant, arrange for the alien to be removed on the first available transportation to the point of embarkation.

17.7 Temporary Inadmissibility under section 235(c).

(a) General. An immigration officer must, pursuant to section 235(c) of the Act, temporarily deny admission to the United States to any nonimmigrant who appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B) or (C). Such actions, although rare, are extremely serious and sensitive.

(b) Procedures. Basic procedures for temporary denial of entry are set forth in 8 CFR 235.8. Take a brief sworn statement from the alien, if possible. Exercise caution in asking questions to insure you do not compromise classified information or confidential sources. Complete and serve the alien with Form I-147, Notice of Temporary Inadmissibility. Explain the action being taken and the right to submit a written representation. Complete actions to remove the alien on the first available transportation. Immediately prepare and submit a short memorandum to the district director containing the alien's name, date and place of birth, residence address, file number if known, port and date of temporary inadmission, and a summary of all pertinent facts developed during the inspection. If the alien was entering as a delegate to a convention, provide the date and place of the convention and the sponsoring organization. In sensitive, high profile cases, follow the procedures for reporting incidents described in Chapter 2.7. Institute checks with other law enforcement agencies to develop further information. Prepare Form G-325A, mark it "Special Handling- I-147 served pursuant to 8 CFR 235.8" and forward it expeditiously to the district director. Photocopy the data page, visa page, and any other pertinent pages from the alien's travel document.

If the alien previously resided in Canada, forward Form G-325B to the Service liaison officer in Ottawa. When a current Canadian resident is to be temporarily denied admission on security-related grounds, notify the liaison officer in Ottawa by phone or fax, providing available personal data. If the denial of admission is based on lookout information, the liaison officer should be so advised, and if the lookout is a temporary one, also provide a synopsis of the lookout. The liaison officer will consult available sources and provide information to the port normally within a few hours. Delay action pending receipt of the response.

After five days, or upon receipt of the alien's written statement, prepare a detailed report for submission to the regional director. In addition to the information from the summary report, include other personal data such as marital status; the destination, duration, and purpose of the proposed visit; basis for temporary inadmissibility, including sources, reliability of informants, and identify what, if any, information is classified and an assessment of whether disclosure of the information would be prejudicial to the public interest, safety, or security of the United States. Attach a copy of any sworn statement taken, or explain why there was none. Attach the results of checks with other agencies. Make a recommendation as to whether or not the alien should be accorded a hearing by an immigration judge.

(c) Canadian "Summary Conviction". An alien who is convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada as the only offense committed is not inadmissible to the United States on the basis of that conviction. [See General Counsel Opinion 92-36 for a detailed discussion of this issue.] (Added IN 99-30)

17.8 Detention of Aliens at Ports-of Entry.

(a) General. During an inspection, officers have the authority to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port-of-entry, detention begins when the applicant is referred into secondary and waits for processing.

(b) On March 9, 2004, the Office of Field Operations issued CBP Directive No. 3340-030A, which superseded Directive No. 3340-030 issued on July 26, 2001. This directive also supersedes previous port of entry detention procedures established under the former INS. Following is Directive No. 3340-030A:

SUBJECT: SECURE DETENTION PROCEDURES AT PORTS OF ENTRY

1. PURPOSE. This Directive establishes national policy for the temporary detention of persons by U.S. Customs and Border Protection (CBP) in secure areas at Ports of Entry (POEs).

2. POLICY.

2.1 This policy shall pertain to the temporary detention of all persons who are detained in secure areas. This includes, but is not limited to, those persons suspected of terrorist activity, are under arrest, are awaiting confirmation on National Crime Information Center (NCIC) warrants, suspected as internal contraband carriers, aliens awaiting removal, transfer, or referral, or other processing involved in a secondary inspection, e.g. fuel tank exams.

3. AUTHORITIES/REFERENCES. 19 U.S.C. §§ 482, 1461, 1581, 1582; 8 U.S.C. § 236; Title 8 Code of Federal Regulations 236.1(e) [8 CFR 236.1]; Personal Search Handbook (PSH), CIS HB 3300-04A revised November 1999; Physical Security Handbook CIS HB 1400-02A; Enforcement Handbook, Chapter 43, Detention, Arrest, and Handling Prisoners; Customs Directive 3340-028 (Physical Control of Suspects);

Internal Operating Procedures Notification (IOPN), 00-19, "Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners," dated April 26, 2000; Policy Memoranda dated April 11, 2003, April 25, 2003, May 13, 2003 relating to Severe Acute Respiratory Syndrome (SARS); Inspector's Field Manual, Chapter 17.

3.1 General. CBP Officers have the combined statutory authority under Title 8 United States Code [8 USC], the Immigration and Nationality Act (INA) and Title 19 United States Code [19 USC]. It allows CBP officers to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States, detain persons suspected of violating the customs, agriculture or other laws of the United States that are enforced at the border. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port of entry (POE), detention begins when the traveler is referred into secondary and when processing is underway or subject is waiting processing.

4 DEFINITIONS.

4.1 U.S. Customs and Border Protection Officer. Includes all legacy agency inspectors and canine enforcement officers.

4.2 Secure Area. This refers to areas such as a detention cell, search room, interview room, or security office where an individual is detained for a temporary period of time out of public view and cannot flee.

4.3 Attended Area. This refers to a location where a person is constantly in the physical presence of an officer in a secure area.

4.4 Unattended Area. This refers to a detention cell, confinement area, or secure area where a detainee may be out of view of an officer.

4.5 Juvenile. A person who has not reached his/her 18th birthday.

4.6 Patdown Search. The term refers to the act of an officer searching for merchandise, including contraband, weapons, or documents hidden in the clothing a person is wearing or on their body.

4.7 POE Short-term Detention. The temporary detention of a person at a POE while a case is being processed administratively or prepared for presentation for prosecution; pending parole, release, departure from the United States, or transfer of custody to another branch or agency; or while CBP makes arrangements for

longer term detention. Short-term detention begins with the subject being referred by an officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated and/or assigned secure area for less than 24 hours.

4.8 POE Hold Room. A confined area or secured room at a POE in which detained persons are temporarily held pending a secondary process, i.e., vehicle examination, adjudication, processing of documents, interviews, etc. Detention of a person in a POE hold room shall be for the least amount of time necessary.

NOTE: At a POE where no hold rooms exist, and where operationally feasible, a segregated area away from the traveling public should be established within the port. Direct supervision and control of the detainee must be maintained.

4.9 POE Detention Cell. A room where a person is placed who must be physically separated from the primary and/or secondary inspection areas, awaiting transfer to another detention facility or other Law Enforcement Agency (LEA), when constant surveillance of the subject is not feasible, and/or for ensuring the safety of both the traveling public and officers.

4.10 POE Search Room. A private designated location that is designed for extensive search of a person and that prevents all but designated necessary personnel from viewing the subject. A POE search room may serve as a temporary hold room should separation from others be required or extra room needed.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, is responsible for policy oversight, which includes the formulation and implementation of guidelines and procedures.

5.2 Directors, Field Operations (DFOs) and Port Directors (PDs) are responsible for managing the implementation of this program and monitoring compliance with the procedures to ensure uniformity of application.

5.3 The PDs are responsible for ensuring that all Treasury Enforcement Communication System (TECS) reports ([redacted]), detention logs, and any other reports pertaining to detentions are completed and reviewed. The reviews will determine the effectiveness of the procedures contained within this Directive, as well as, how well they are carried out.

5.4 Supervisors are responsible for ensuring that CBP officers under their direction are familiar with the guidelines set forth in this Directive.

5.5 The U.S. Customs and Border Protection Basic Inspector Training Academy is responsible for incorporating this Directive into the appropriate training programs.

5.6 The PDs are responsible for identifying and ensuring that CBP officers under their direction are familiar with the areas that have been designated as detention cells, search rooms, or holding rooms. Dual designation of a particular room is authorized, i.e., a detention cell may also be used as a search room.

6 DETERMINATION TO DETAIN.

6.1 Priority of Detention. In cases where it is not possible to detain every person in a POE hold room, persons should be detained in the following priority:

6.1.1 [redacted]

6.1.1.1 [redacted]

6.1.1.2 [redacted]

6.1.1.3 [redacted]

6.1.1.4 [redacted]

6.1.1.5 [redacted]

6.1.1 [redacted]

6.1.2 [redacted]

6.1.3 [redacted]

6.1.4 [redacted]

7 DURATION OF DETENTION.

7.1 Short-term detention begins when the traveler/applicant is referred by a CBP officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated area; and is for the least amount of time necessary to complete the inspection or processing.

7.2 As a rule, the maximum time an individual may be held in a secure area at a POE is no longer than [redacted] Accordingly, every effort will be made to transfer, transport, remove, or release those in custody as quickly as is operationally feasible.

7.3 The PD will approve all detentions in secure areas that reach or exceed [redacted]

7.4 The DFO must be notified through the chain of command, if the detention period at the POE extends to [redacted] or more.

7.5 A person placed in an unattended secure area will be checked [redacted], as the situation requires (see section 9.2). These checks will be annotated in the Detention Log [See Appendix 17-8]. For the purpose of tracking the duration of detention, the time will begin when the person is placed in a secure area. The tracking of time will be part of the Detention Log.

8 8 EXCEPTIONS TO SHORT-TERM DETENTION IN POE HOLD ROOMS.

8.1 Officers shall be sensitive to detained persons who are pregnant, on life-sustaining/lifesaving medication, appear ill, comprise family units (parent/adult with child/juvenile), or are persons of advanced age (over the age of 70) or unaccompanied juveniles (under the age of 18). [See section (9.27) of this Directive regarding Juvenile Detention Procedures and legacy Immigration Inspectors Field Manual (IFM) chapter 17.15(f)(5).]

8.2 For humanitarian reasons, the processing of secondary cases for these persons shall be expedited as quickly as operationally feasible.

8.3 To the extent possible, [redacted] Officers should ask the detainee whether medical treatment is necessary. If the

detainee replies in the affirmative, or if medical treatment appears necessary, officers shall make appropriate arrangements. [See section 9.25 of this chapter regarding Medical Emergencies.]

8.4 Family units, persons of advanced age, and unaccompanied juvenile detainees [redacted] unless extraordinary and unforeseen circumstances exist.

8.5 In cases where family units are encountered but only the parent or legal guardian is detained, specific circumstances will dictate whether they should be separated from the juvenile who is not detained. If removing the juvenile from the parent or legal guardian is not feasible, arrangements should be made to keep the family unit together until a social service worker or an adult family member arrives to take custody of the juvenile.

8.6 Males and females shall be segregated at all times when in a POE detention cell (even if they claim to be married). Under no circumstances are detained persons under the age of 18 to be held with adult detainees, unless the adult is an immediate relative or recognized guardian who has been charged with the care and custody of the minor, and no other adult detainees are present in the hold room. Special treatment of juveniles is of paramount importance. [See section 9.27 of this chapter regarding Juvenile Detention Procedures.]

8 PROCEDURES.

9.1 Detention Log. Port Directors will ensure that each POE maintains a detention log (manually and/or by computer) for all detainees placed in a POE detention cell. The officer handling the case shall enter the information relating to each detainee immediately upon placing him/her in a hold room and/or holding cell. For uniformity purposes, the attached Detention Log will be used at all locations for each unattended secure area and will contain an entry for each individual detained. The Detention Log will be maintained and filed at the POE [redacted] Each entry will contain the information listed below.

(a) Name of the person detained
(b) Date of Birth (DOB)
(c) Reason detained
(d) Time & Date placed into hold room and/or holding cell
(e) Time & Date removed
(f) [redacted] interval checks

(g) Physical/Mental condition
(h) Officer's initials and comments
(i) Meals offered/eaten/declined

9.2 Detention Cell Monitoring. Officers shall closely supervise detention cells at the POE when in use. Officers shall monitor hold rooms [redacted] noting in the log the time and officer's initials. It's the responsibility of the supervisor to ensure that an officer is within visual or audible range of the hold room to allow detainees access to restroom facilities (if not incorporated in the detention cell) on a regular basis.

9.3 Individual Caution Sheet. An Individual Caution Sheet [See Appendix 17-8] will be generated and posted near the entrance to the detention cell or in the secure area for those detainees who pose a special risk, i.e. diabetic requiring injections or possible suicide risk. The sheet will be maintained until the detainee is released from CBP custody and the fact that there is a detainee with a Caution Sheet will be communicated to all CBP officers during shift change briefings/musters. After the person is released or transferred to another agency or facility the Individual Caution Sheet will be retained on file [redacted] For uniformity purposes, the form is attached. The Individual Caution Sheet will contain at minimum the following check-off list to flag the detainee's special risk factor:

(a) Name and DOB
(b) Medical condition – requires prescribed medication
(c) Hostile or uncooperative
(d) Depression or suicidal
(e) Asylum Claimant
(f) Juvenile
(g) Communicable Disease
(h) Other

9.4 Medical. Whenever a CBP officer has reasonable suspicion that a traveler has a respiratory illness such as Severe Acute Respiratory Syndrome (SARS), the individual will be detained, and an Individual Caution Sheet generated. In detaining and transporting them, follow established guidelines. (SARS Policies Attached).

9.4.1 All persons placed in an unattended secure area at a CBP facility will be asked whether they have a medical problem or condition that may require some attention. If they are currently taking any prescribed medications the CBP officers will identify the type of prescribed medication, when it was last taken, and when the next dosage is needed.

9.4.2 CBP officers will ***not*** administer or assist in injecting or administering medication. When an injection or administration of prescribed medication is necessary, Emergency Medical Services will be contacted. Prescribed oral medication in a properly identified container, with the specific dosage indicated, may be self-administered under the supervision of a CBP officer. Administration of prescribed medication, medical assistance, or refusal of the same, will be noted in the Individual Caution Sheet.

9.4.3 Officers will closely monitor and if possible segregate any detainee exhibiting signs of hostility, depression, or other symptomatic behavior (i.e. threats of suicide). In such cases, the officer will notify the shift supervisor and execute the Individual Caution Sheet. The Individual Caution Sheet must accompany the subject when transferred to another facility.

9.5 Asylees. When an asylum applicant is encountered, the CBP officer will transfer the applicant to a secure, attended, or unattended area as appropriate and an Individual Caution Sheet will be generated. Asylum applicants will be kept separate from other detainees to the extent possible and not placed in a detention cell unless otherwise indicated by their behavior. Officers should take note of signs of trauma, anxiety, or other factors relating to the case in determining the level of detention required.

9.6 Meals. Funding for meal service is not discretionary and is the responsibility of the local office through the DFOs. Officers shall provide a meal to any person, whether in a hold room or not, who is detained more than 6 hours (including secondary time or case preparation time). Juveniles, small children, toddlers, babies, and pregnant women shall have access to snacks, milk, or juice at all times. Regardless of the time in custody, officers shall provide a juvenile with meal service. In cases where an adult detainee requests a snack or meal due to extraordinary circumstances before the next meal service, the officer shall accommodate the request. Officers should be sensitive to the culinary cultural/religious dietary restrictions and/or differences of all detainees whenever feasible. A record of what type of meal is given to the detainee shall be logged. For an alien detained in a hold room, time of feeding or declination of a meal shall also be noted in the Detention Log.

9.7 Drinking Water. Drinking water shall be available in Styrofoam or paper cups for detainees requesting water. It is the responsibility of the supervisor to ensure that drinking water is available.

9.8 Restrooms. Access to restrooms shall be available to any detainees in a hold room or in the secondary inspection area. An officer of the same sex shall escort and closely monitor a detainee when using the restroom. Detainees using the

restrooms shall have access to toilet items such as soap, toilet paper, female hygiene items, diapers, and wipes. **NOTE:** Access to restroom facilities may be restricted if the detained person is suspected of being an internal carrier.

9.9 Telephone. Officers shall notify every alien of his or her right to communicate by telephone with the consular or diplomatic officers of country of nationality in the United States when the removal of the alien cannot be accomplished immediately, and the alien must be placed in detention for longer than 24 hours.

9.9.1 In the cases of certain nationalities, if the alien is detained longer than 24 hours at the POE, existing treaties and CBP policy require that the service notify the appropriate consular or diplomatic officers about the alien's detention, even if the alien requests that this not be done. For the list of applicable countries, see 8 CFR 236.1(e).

9.9.2 Officers shall not mention any asylum claim or fear of persecution or torture expressed by the alien when contacting a consular official, nor shall they indicate the nature of the proceedings against the alien.

9.9.3 Dependent upon the length of detention and security risks, the Supervisor will determine whether or not the detainee will be allowed to communicate by telephone or in person with any other person, including consular officials. [See IFM chapter 17.15(b)(7) and 8 CFR 236.1(e).]

9.10 Detention Cells. The secure area where the detained person is placed must be cleared of all items that could be used as a weapon, to facilitate an escape, or to do bodily harm to the detainee or others. This includes purses, handbags, backpacks, and luggage. Weapons or improvised weapons may pose a significant risk to officer safety and care must be taken to minimize the subject's potential access to them. [redacted]

9.10.1 Detention cells will routinely be thoroughly cleaned and sanitized and inspected for evidence of tampering.

9.10.2 Any problems encountered must be reported to the supervisor so that corrective action may be initiated.

9.11 Attended Area. When it is necessary to detain an individual in a work area, additional caution must be exercised to ensure the safety of the person and CBP employees. [redacted]

[redacted]

9.11.1 The person must be monitored at all times by at least one officer. The area within the person's direct reach must be cleared of all items that could be used as a weapon or to facilitate an escape.

9.11.2 Under no circumstances will evidence or other items that can be destroyed or pose a threat to any person be kept where they are accessible to a detained individual.

9.11.3 When possible, two CBP employees should be assigned to process and monitor persons detained at a CBP facility.

9.12 Search Procedures. Searches may, under certain conditions, be necessary to meet enforcement and/or security, or safety concerns. Under section 287(c) of the INA, officers have the authority to conduct a search of the person and personal effects of a person seeking admission if the officer has reasonable ground to suspect that ground of inadmissibility exists that may be disclosed by the search. All searches of detainees in CBP custody shall be conducted in a manner that is safe, secure, humane, dignified and professional. [redacted]

9.12.1 All officers are to be aware of and comply with the enforcement standard on body searches and the CBP Personal Search Policy. Below are some of the policy guidelines and procedures for searches conducted at the border and functional equivalent of the border (POE) during the time of entry of a traveler for admission.

9.12.2 If a person is temporarily detained by CBP and must be placed in a secure area, CBP officers shall conduct a patdown in accordance with the guidelines established in Chapters 2 and 3 of the Personal Search Handbook and Chapter 43 of the Enforcement Handbook.

9.12.3 When a person has undergone a personal search in accordance with this Directive, the search shall be recorded in the appropriate TECS record using the *Reason for Search* code "[redacted]

9.12.4 This Directive does not supersede the authority of a CBP Officer to conduct an immediate patdown or to secure a weapon if an officer suspects that a person may be armed.

9.12.5 This Directive does not supersede the authority of a CBP officer to

conduct a lawful search incident to an arrest.

9.12.6 If an officer reasonably suspects merchandise or contraband is present as a result of the patdown search pursuant to paragraph 6.1, the CBP officer may conduct a more intrusive search to confirm or dispel suspicions, in accordance with the guidelines established in Chapter 4 of the Personal Search Handbook.

9.12.7 To ensure safety, prior to placing a person into a detention cell, officers shall empty the detainee's pockets of all sharp objects that may be used as weapons as well as all rope-like objects that the alien could use to injure him/herself. Examples of these things are:

(a) [redacted]
(b)
(c)
(d)
(e)

9.12.8 An officer may remove and examine [redacted] to ensure there are no hidden items. The items shall be returned to the individual and may not be confiscated until probable cause for arrest exists. However, if there are indications or articulable facts that may lead an officer to believe that the individual may attempt to harm themselves while in an unsecured, unmonitored area, then shoelaces, belts, neckties, and scarves may be removed.

9.13 Restraints Procedures. The use of restraints on persons in CBP custody shall be conducted in a manner that is safe, secure, humane, and professional. When restraints are used, the officer must have reasonable articulable facts to support the decision. Officers should employ only the amount of restraint reasonably necessary to ensure the safety of the detainee or others, and to prevent escape. Officers should take into consideration known criminal activity, observed dangerous or violent behavior, verbal threats, and/or the nature of the inadmissibility of the individual in determining whether to use restraints, continue their use, or remove the restraints.

9.13.1 All Officers are to be aware of and comply with the Enforcement Standard on the Use of Restraints. [See Enforcement Standard for the Use of Restraints and Customs Directive 3340-028 Physical Control of Suspects.]

9.13.2 In accordance with Customs Directive 3340-028 (Physical Control of

Suspects), if an officer uses handcuffs solely for the safety of the officer and others, the officer should inform the restrained individuals that they are not under arrest and that the restraints are a temporary measure.

9.14 Escort Procedures. Inspectors may provide escort services to remove or transport detainees. Escorting officers are responsible for determining the need and level of restraints used at any time while escorting a detainee. All detainees in CBP custody shall be escorted in a manner that is safe, secure, humane, and professional. Whenever operationally feasible the escorting of persons will be conducted by two officers.

9.14.1 All officers are to be aware of and comply with the Enforcement Standard for Escorts. [See Enforcement Standards for Escorts and the Use of Restraints for more detailed guidelines.] Below are some of the policy guidelines for the escort and transport of those apprehended at entry.

(a) No detainee shall be transported/escorted without the assigned officer conducting a search of the detainee, except when exigent circumstances pose a safety hazard or danger to the officer, detainee or public. In that case, a search shall be conducted as soon as it is practicable. At minimum, a patdown search shall be performed and recorded in accordance with the Personal Search Policy.

(b) When escorting detainees in CBP vehicles, especially unaccompanied detainees of the opposite sex or minors, all officers shall maintain regular radio or telephonic communication with other CBP personnel, insofar as technologically possible and resources allow.

(c) Families, unaccompanied females, and unaccompanied minors shall be separated from unrelated adult males by separate passenger compartments or an empty row of seats. If possible, these detainees shall be transported separately from other detainees.

(d) When transported in a CBP vehicle, detainees shall be restrained in accordance with the Use of Restraints Policy and placed in seatbelts (when practicable).

(e) The passenger section of all empty CBP vehicles and all immediate confinement areas shall be searched prior to, as well as following, each escort to ensure that no weapons or contraband have been hidden or left behind.

(f) When escorting a detainee in view of the general public (i.e., airport

terminal) for removal from the United States, officers shall use care and discretion when handling and removing restraints from detainees to avoid undue concern by the traveling public and airline personnel.

9.15 Transfer Procedures. Every effort must be made to transfer, transport or release detainees in custody as quickly as possible. The DFOs or their designees shall develop local procedures in writing for authorization and arrangement for detention.

9.15.1 Once a detainee has been transferred to the custody of another agency and/or Detention and Removal, responsibility for the individual is transferred to that entity.

9.16 Control and Safeguarding Detainee Personal Property. The control and safeguarding of detainee personal property shall include the secure storage of funds, valuables, baggage and other personal property.

9.16.1 All property will be receipted on the appropriate form CBP-6051.

9.16.2 Initial and regularly scheduled inventories of all funds, valuables, and other property will be conducted and documented on a CBP-6051.

9.16.3 All items belonging to the detainee shall be placed in a properly marked plastic sealed bag, inventoried, and placed in a secure area.

9.16.4 A safe, secure designated storage area shall be assigned. [See Detention Standard on Accountability and Safeguarding of Detainee Funds and Personal Property.]

9.16.5 Officers shall use the following form:

(a) Form CBP-6051, Custody Receipt for Retained/Detained or Seized Property. Used when items or personal property are removed from a person and stored for safekeeping. CBP officers should turn over all items or evidentiary value with a CBP-6051 to the next person taking custody of the person, i.e., Special Agent or other federal, state or local law enforcement Officer. Guidelines for retaining personal effects/property from individuals that have been arrested are outlined in Customs memorandum, File: CO:TO:S:O SSJ, titled "Personal Effects," dated March 29, 1993.

(b) A logbook and inventory sheet will be maintained listing the detainee name, A-number if applicable, Form CBP-6051 number, date items were

retained or seized, property description, name of officer(s) recording the property, and the date, time, officer(s) conducting the inventory.

9.16.6 Where operationally feasible, two officers will inspect all funds and property, including those items found in parcels, suitcases, bags, bundles and boxes, in the presence of the detainee to ensure officer safety and accountability. This procedure will also be followed when property is returned to a traveler subsequent to his or her release. All PDs or other management officials accountable for POE operations must ensure that appropriate procedures are in place and in use.

9.17 Fire, Building Evacuation and Medical Emergencies. Established written evacuation plans for the POE shall include directions for an officer to remove detainees from hold rooms in case of fire and/or other building evacuation. Such event and its duration must be annotated in the Detention Log.

9.17.1 Appropriate emergency services will be called in the event of a medical emergency (i.e., heart attack, difficulty breathing) during the detention of any person.

9.17.2 The CBP officer must notify the supervisor immediately of all medical emergencies.

9.17.3 If the detainee is removed for medical treatment, a CBP officer shall accompany the detainee and remain with the detainee until doctors determine whether the illness will require hospitalization.

9.17.4 If the detainee is not hospitalized the CBP officer must remain with the detainee until treatment is completed and then escort the detainee back to the POE.

9.17.5 If the detainee is hospitalized, the CBP officer shall notify the supervisor and await further instructions from the supervisor.

9.18 Special Notification Requirements. [redacted]

9.19 Juvenile Detention Procedures. Special care must be exercised when processing and detaining persons under the age of 18. The CBP policy is outlined in 8 CFR 236.3 and must be strictly followed. [See IFM chapter 17.15 (f), Special Treatment of Minors.]

9.19.1 At all stages of the inspection, detention, and removal process of a juvenile, officers shall take precautions to ensure the minor's rights are protected and that he or she is treated with respect and concern. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement. [See IFM Appendix 17-4, policy memorandum discussing Flores settlement.]

9.19.2 Minors will have access to restrooms, drinking water, food, and medical assistance if needed.

9.19.3 Minors will NOT be placed in short-term detention hold rooms, unless they have shown or threatened violent behavior, have a history of criminal activity, or there is an articulable likelihood of escape.

9.19.4 Minors will NOT be restrained unless they have shown or threatened violent behavior, have history of criminal activity, or there is an articulable likelihood of escape.

9.19.5 Minors will be allowed reasonable access to their parents or legal guardians if the supervisor believes it will be constructive. However, parent(s) or legal guardian(s) will not be allowed to inflict corporal punishment upon the juvenile while in the custody of CBP.

9.19.6 Unaccompanied minors must NOT be held with unrelated adults.

9.19.7 In situations where a female is nursing an infant, the infant will not be removed from the care of the mother (unless she poses a danger to the child). If a mother and infant must be separated for safety purposes, a social service worker must be contacted to take custody of the child.

9.20 Fingerprinting Individuals. When individuals are being fingerprinted, i.e., 10 digit hard print (excluding single digit IDENT prints), officers shall secure their firearms and chemical weapons in an approved firearms locker prior to beginning the process.

10 REPORTING REQUIREMENTS.

10.1 If a person makes a credible threat, assaults someone, is injured, is suspected of having SARS or any other communicable disease, escapes, or attempts to escape while in CBP custody, notification will be made to the PD, DFO, and Commissioner's Situation Room, [redacted] If a person escapes, notify all appropriate law enforcement agencies.

10.2 If a person threatens or assaults a CBP officer, in addition to above requirements, notification will also be made to local field office of the FBI, or other Agencies as appropriate.

11 NO PRIVATE RIGHT CREATED. The procedures set forth in this Directive are for CBP internal use only and create no private rights, benefits, or privileges for any private person or party.

17.9 Medical Referrals.

(a) General. The U.S. Public Health Service (PHS) has statutory and regulatory responsibility to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Applicable regulations are found in 42 CFR Parts 34 and 71. These responsibilities are delegated to the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Division of Quarantine.

Quarantine stations are located at several major international airports. Each quarantine station has responsibility for all ports in an assigned geographic area. You should know which quarantine station has jurisdiction over your port. Historically, PHS quarantine stations have been referred to in the port community simply as "PHS" or "Public Health." As actual organizational names and assignments have changed over the years, that tradition has remained constant.

The Division of Quarantine is empowered to apprehend, detain, medically examine, or conditionally release individuals (including U.S. citizens) suspected of having one of the following diseases:

- Cholera and suspected cholera,
- Diphtheria,
- Infectious tuberculosis,
- Plague,
- Suspected smallpox,
- Yellow Fever,
- Suspected viral hemorrhagic fevers such as Lassa, Marburg, Ebola, Congo-Crimean and others not yet isolated or named, and
- Severe Acute Respiratory Syndrome (SARS).

Foreign quarantine regulations require that death or illness of an arriving international passenger or crew member is to be reported by the captain of the arriving ship or plane to the quarantine station having responsibility for the port of entry; however, illnesses

are not always reported.

Whenever a Federal inspector has any questions regarding public health entry requirements for persons or importations, he or she should contact (day or night) the appropriate quarantine station or Division of Quarantine headquarters in Atlanta, Georgia. [A list of addresses and phone numbers for quarantine stations is contained in Appendix 17-2.]

(b) Inspection of Arriving Persons. The following guidelines relate to the inspection for medical purposes, of all arriving international passengers and crewmembers.

(1) Observe. Observe all arriving passengers and crew for signs and symptoms of illness, such as [redacted] A person is considered to be ill in terms of foreign quarantine regulations when symptoms meet the following criteria:

(A) Temperature of 100 degrees F. (38 C.) or greater which is accompanied by one or more of the following: rash, jaundice, glandular swelling, or which has persisted for 2 days or more;

(B) Diarrhea severe enough to interfere with normal activity or work.

(2) Detain. Hold ill passengers and crew, and ask for details about symptoms and itinerary. At a port-of-entry where a quarantine station is staffed, that station should be notified and a quarantine inspector will investigate. If there is no quarantine inspector at your port, the appropriate quarantine station should be notified. The quarantine station will release or conditionally release the ill person, or if the circumstances warrant, call a physician to conduct an examination and recommend appropriate action.

(3) Check Itinerary. It is sometimes necessary to check the itinerary of arriving persons because of the possibility of an outbreak of a communicable disease in a foreign area. Knowledge of the itinerary helps in determining the appropriate preventive measures. If this situation should arise, CDC will direct that each arriving person be asked if he or she has been in the infected country within a specified number of days. If so, the person is to be referred to the appropriate quarantine station.

(c) Medical Inspection of Arriving Aliens. The health-related grounds of inadmissibility of aliens under section 212(a) of the Act provide for the inadmissibility of any alien who:

(1) Is determined to have a communicable disease of public health significance

(currently, the same diseases previously classified as "Dangerous Contagious Diseases" which are: Chancroid; Gonorrhea; Granuloma Inguinale; Human Immunodeficiency Virus (HIV) Infection; Leprosy, infectious; Lymphogranuloma Venereum; Syphilis, infectious stage; and Tuberculosis, active.); or

(2) Seeks admission or adjustment as an immigrant and who has not been vaccinated against at least the following diseases: mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee on Immunization Practices; or

(3) Has or had a physical or mental disorder with associated behavior that poses or may pose a threat to the property, safety, or welfare of the alien or others; or

(4) Is a drug abuser or addict.

(d) Procedure. Inspectors should immediately advise the appropriate quarantine station when an immigrant arrives without medical documents or with incomplete medical documents. When processing aliens, do not keep the alien's chest X-ray film. This is an important medical document that the alien should retain as part of his or her permanent health records.

Refer to the appropriate quarantine station all aliens for whom a "Medical Hold" (Form CDC 75.40) should be issued. Candidates for a "Medical Hold" are:

(1) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit a physical condition which may render them inadmissible under section 212(a) of the Act;

(2) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit variations in behavior which may indicate a physical or mental disorder that may pose a threat to the property, safety, or welfare of the alien or others, and may be inadmissible under section 212(a) of the Act;

(3) All aliens who require a medical examination overseas (immigrants, refugees, fiancé(e)s of U.S. citizens and their minor children), but who arrive without evidence or with incomplete evidence of having had one performed, or with one that has expired. Satisfactory evidence can consist of a properly completed "Medical Examination of Applicants for United States Visas" (Form OF-157), with results of chest X-ray and serologic tests for syphilis and human immunodeficiency virus (HIV) infection indicated (**Note:** Chest X-ray and serologic tests are required for aliens 15 years of age and older); and

(4) All aliens with a Class A condition or a Class B condition including tuberculosis, not infectious; and Hansen's disease [leprosy], not infectious. These aliens should have a stamp imprinted on the face of their visa (Form OF-155A) as follows:

CLASS A OR CLASS B
REQUIRES ATTENTION
OF USPHS AT POE

While consular officers normally stamp the OF-155A when an immigrant has a medical condition of public health concern, this is sometimes not done. The inspector should check all OF-157's whether or not the "Attention PHS" stamp is present.

When quarantine station personnel are not available to process aliens with these medical conditions, retain a copy of the OF-157. On the reverse side, write the alien's U.S. address, sponsor's name and address, arriving flight and date, port-of- entry, and the INS inspector's name. A photocopy of the alien's visa (OF-155A) is satisfactory in lieu of transcribing this information on the reverse of the OF-157 provided that the address is correct on the OF-155A and that the flight number and date of arrival are recorded on the OF-155A prior to making the photocopy. The OF-155A and/or OF-157 with requested information should be given, mailed, or sent by FAX to the appropriate quarantine station.

If the alien has a Class A communicable disease of public health significance, copies of the OF-157, OF-155A, and both sides of the Form I-601 (being changed to new Form I-724) waiver application should be given or mailed to the appropriate quarantine station. The statements to be completed by waiver applicants who are HIV positive or who have Hansen's disease will be affixed to the back of the I-601 waiver application by CDC Division of Quarantine staff. See IMMACT Wire #65 dated August 7, 1991 for further information.

If the alien has a Class A physical or mental disorder with associated harmful behavior, a copy of USPHS/CDC Form 4.422-1, "Statements in Support of Application for Waiver" should be given or mailed to the appropriate quarantine station, along with the OF-157, OF-155A, and I-601 (I-724).

Note: There is no waiver provision in the law for aliens applying for immigrant visas who are found to be excludable under section 212(a)(1)(A)(iv) of the Act for drug abuse or addiction. If an alien arrives with a visa indicating Class A drug abuse or addiction, please refer to the appropriate quarantine station.

(e) Special Procedures Pertaining to First Time Refugees and Asylees. Refugees and asylees normally arrive at ports where quarantine inspectors are assigned, but this may

not always be the case. Notify the appropriate quarantine station of all refugees and asylees entering the U.S. for the first time. If a quarantine inspector is not available to process the refugee or asylee, you will be asked to obtain the following information, normally by making copies of documents carried by the refugee or asylee. This information is necessary to ensure that all refugees and asylees receive a health screening and any appropriate immunizations or treatment at the place of resettlement:

- Name, date, country of birth, and sex of refugee,
- Language spoken,
- "A" Number,
- Name, address, and phone number of local sponsor,
- Name of principal sponsor (Voluntary Agency), and
- Date, place of arrival, and flight number.

(f) Suspected Tubercular Parolees. Every effort should be made to determine the tuberculosis status of parolees prior to release. Refer those who are suspected of having infectious tuberculosis to the appropriate quarantine station.

[Rev. IN 03-41]

17.10 Abandonment of Lawful Permanent Resident Status.

(a) General. There are several possible actions when the inspecting officer has reason to believe an alien seeking admission with an alien registration card or SB-1 visa has actually abandoned lawful permanent residence. Refer to the discussion in Chapter 13 on this subject. In some instances, the applicant voluntarily wishes to relinquish his or her alien registration document and either enter as a nonimmigrant or depart from the U.S. immediately. Most often such aliens will already be in possession of a nonimmigrant visitor's visa. The inspecting officer must never coax or coerce an alien to surrender his or her alien registration document in lieu of a removal hearing.

(b) Procedure for Documenting Abandonment of Residence.These instructions regarding the disposition of completed I-407 forms apply not only to Inspections personnel, but to all Service or Department of State employees involved in the execution of any I-407. In a situation where the alien does voluntarily relinquish his or her alien registration card, complete the Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident. The alien must sign the I-407, acknowledging that the action is strictly voluntary. Execute Form I-89, completing the appropriate blocks if the alien is surrendering Form I-551, Alien Registration Receipt Card. If the alien is surrendering a previous edition, Form I-151, no I-89 is required. Ordinarily, you should take a sworn statement in addition to completing Form I-407. Attach the Alien Registration Receipt Card to the Form I-89, if completed, or the Form I-407. Forward the I-89 (if completed), attached to the Form I-407 and additional sworn statements, to the Texas Service Center for CLAIMS/CIS data entry and document destruction. After data entry and card

destruction, the Service Center will forward the original Form I-407, I-89 and sworn statements to the appropriate FCO for filing in the original "A" file.

If the I-407 is executed in connection with an application for admission at a port-of-entry, admit the applicant as a nonimmigrant, following normal procedures for aliens with visas; or exercise the visa waiver option pursuant to section 212(d)(4) of the Act or the Visa Waiver Program. If the alien chooses to immediately depart the U.S., advise the alien that he or she may still be entitled to issuance of a temporary alien registration card, for reentry and a removal hearing, as described above in Chapter 17.6(d).

If the I-407 is being executed for an alien who is in the United States pursuant to admission as a lawful permanent resident and is not in removal proceedings, yet who wishes to relinquish resident status and depart from the United States, the alien should be granted a suitable period of time to effect voluntary departure, in accordance with current procedures.

Occasionally, you may receive an alien registration card surrendered by a resident alien either to the Service or to a transportation line, where the bearer has expressed an intention to relinquish residence. If the bearer has not yet departed and if time permits, take a sworn statement from him or her concerning the facts surrounding the abandonment and attach it to the I-407. If the bearer has already departed the U.S. and you are sure of the facts surrounding the abandonment, execute Form I-407, noting the departure information and other relevant facts. (Paragraph (b) revised 3/5/98; IN97-04)

(c) Restriction in the San Antonio District. The U.S. District Court for the Southern District of Texas prohibits immigration officers from soliciting or taking waivers of removal hearings in INS district 14. See **Leticia Sanchez-Hernandez et al c. Richard Casillas et al**, Civil Action No. L-78-4 2, April 10, 1981.

17.11 Asylum Claims/Safe Third Country Agreement with Canada. (Revised 2/23/05; CBP 8-05)

(a) General. The Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Safe Third Country Agreement) was signed on December 5, 2002. Final implementing regulations were published on November 29, 2004, with an effective date of December 29, 2004.

The Agreement provides a framework to determine which country is responsible for consideration of asylum or torture claims. With certain exceptions, the Agreement requires asylum-seekers to make the asylum claim in the country where they were last physically present (either Canada or the United States) upon arrival at a U.S.-Canadian land border port of entry. Unless they qualify for an exception under the agreement, asylum-seekers will generally have to seek protection in Canada if attempting to enter the United States from Canada, or in the United States if attempting to enter Canada

from the United States.

(b) Exceptions. The Agreement does not apply to persons who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

The Agreement contains numerous other exceptions. Persons determined to qualify for one of these exceptions will be allowed to proceed with their asylum claim in the country to which they are seeking admission.

- Persons who have a spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or legal guardian in the other country, as long as the relative has lawful status (other than B-1/B-2 visitor status) or has a pending asylum claim in the country where the alien is seeking asylum (*the relative with a pending asylum claim must be 18 years of age or older; there is no age limit for relatives with other lawful status*);
- Unaccompanied minors, defined as an unmarried asylum claimant under the age of 18 who does not have a parent or legal guardian in either the United States or Canada (*this differs somewhat from common usage of the term "unaccompanied" for other purposes under the immigration laws*);
- Persons who have a validly issued visa or other valid admission document, other than for transit (*refers to genuine visas or travel documents issued to the alien by the U.S. government, including those that may have been obtained through misrepresentation, but does not include those obtained through identity fraud or issued in fraudulent or photo-subbed passports*);
- Persons who are not required to obtain a visa for the United States, but are required to have a visa for Canada (*currently no countries fall into this exception);*
- Additionally, the Agreement specifically includes a provision allowing each country to examine, at its own discretion, any asylum claim made to that country where it deems that it is in its public interest to do so.

(c) Applicability. The Agreement applies only to arriving aliens at established land border ports of entry along the U.S.-Canada border, as defined in 8 CFR 100.4(c)(2), when the port is open for inspection and to certain aliens being deported from Canada (not pursuant to the Agreement) in transit through the United States.

Arriving aliens are defined in 8 CFR 1.1(q), and for purposes of the Agreement generally include:

- Persons presenting themselves for inspection at a port of entry;
- Persons coming or attempting to come into the United States through a port of

entry (whether or not by presenting themselves for inspection); and

- Persons apprehended or continuously observed crossing the land border by a port official within the physical boundaries of the port, and for this purpose, in the immediate vicinity of the port. Port runners who are observed attempting entry through the port and who are apprehended immediately in the vicinity of the port are considered arriving aliens. Persons who effect entry through a port of entry without detection and who are later apprehended are not subject to the Agreement.

Arrivals by train where the passengers on the train are inspected at the border or other designated place inland where the train arrives are considered land border arrivals for this purpose.

For purposes of the Agreement, ferry crossings along the Canadian border are not considered land border ports of entry.

The Agreement does not apply at preclearance stations in Canada, nor does it apply to aliens who attempt illegal entry between the ports of entry.

It does not apply at airports, except as noted below for aliens being removed from Canada, who claim asylum while in transit through the United States,

(d) Processing aliens subject to the Agreement. There are two distinct sets of processes, depending on whether the alien is an applicant for admission arriving from Canada and applying for asylum in the United States (an arriving alien pursuant to 8 CFR 1.1(q)), or whether the alien attempted to travel from the United States to apply for asylum in Canada and is being returned to the United States pursuant to the Agreement.

Arriving Aliens - Asylum-seekers who arrive from Canada at a land border port of entry and apply for asylum in the United States.

Aliens arriving from Canada at a land border port of entry who request asylum or claim a fear of persecution or torture will be processed for expedited removal and referred to an asylum officer for a credible fear interview. Prior to proceeding with the credible fear interview, the asylum officer will conduct a threshold screening to determine whether an exception to the Agreement applies and the alien will be allowed to proceed with the credible fear interview. If the asylum officer determines that no exception applies, these individuals will be ordered removed by the asylum officer and returned to Canada and their asylum claim examined in accordance with the Canadian refugee status determination system.

CBP Officers at ports of entry are not to attempt to determine whether the Safe Third Country Agreement applies or whether the alien qualifies for any of the exceptions; that determination will be made by an asylum officer. However, any information that CBP Officers obtain through the inspection process that may have a bearing on the eligibility for an exception under the Agreement, such as the use of fraudulent documents, should be fully documented in the file.

(1) Process for expedited removal in accordance with existing guidelines and refer for a credible fear interview. [See Chapter 17.15 concerning the expedited removal/credible fear process.]

(2) In addition to the Form M-444, Information about Credible Fear Interview, the alien shall be given a supplemental notice, Information about Threshold Screening Interview.

(3) Fax the Form I-860, I-867A&B, M-444, legal services provider list, and Information About Threshold Screening Interview to the Asylum Office having jurisdiction over the case. If there is other information in the file, such as the Form I-213 or I-275, that may assist the asylum officer in making the determination under the Agreement, fax that information as well. Information about the use of fraudulent documents or identity fraud, in particular, may have a bearing on the determination.

(4) Prepare Form I-160A, Notice of Refusal of Admission/Parole into the United States. Check the box "Refused admission and paroled into the United States", even though the alien will actually be initially detained in DHS custody rather than paroled. Give (or fax) one copy to Canadian Immigration authorities and have them stamp a second copy to be placed in the A file. This will ensure that Canada will take back the alien if no exceptions to the Agreement are found and the alien is to be returned to Canada.

(5) Seize any fraudulent documents in accordance with existing guidelines. Prepare a travel packet to include a photocopy of the document presented that includes copies of all the pages with cachets, notations, or visas on them, as well as the biometric pages. Also complete a Single Journey Letter on CBP letterhead with the traveler's photograph and fingerprints incorporated in it. Place the packet in the A file to be used if or when the alien is returned to Canada.

(6) Pursuant to existing policy, unaccompanied minors (aliens under the age of 18) are not generally subject to expedited removal, and may qualify for an exception under the Agreement. The definition of unaccompanied minor as used in the Agreement differs somewhat from the definition of juvenile used for other immigration purposes; however, officers need not consider whether the alien meets the definition under the Agreement. For general immigration purposes, a minor is

considered unaccompanied if not traveling with an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. Unaccompanied minors claiming asylum will normally be placed in section 240 proceedings where the immigration judge will make the determination whether any exceptions apply under the Agreement and whether they will be allowed to apply for asylum in the United States. [See Chapter 17.15(f) for processing of minors].

(7) If an asylum-seeker expresses concerns about being placed in expedited removal and detained for a credible fear interview and asks to withdraw his or her asylum claim and application for admission, CBP may permit such withdrawal, in accordance with section 235(a)(4) and 8 CFR 235.4. The decision whether to permit withdrawal of application for admission rather than issue a removal order should take into consideration the seriousness of the inadmissibility and other factors. Aliens who presented fraudulent documents should normally not be permitted to withdraw their application for admission, except under extraordinary circumstances, although they may still wish to withdraw their asylum claim and be removed immediately. The officer handling the case must ensure that there is no misunderstanding and that the alien is voluntarily making that decision. The officer may wish to consult the Asylum Office to determine whether the case should still be referred. Before allowing the withdrawal, the officer must be sure that the alien has both the intent and the means to depart immediately from the United States. When processing an asylum-seeker who wants to dissolve or withdraw his asylum claim, the officer should take a second sworn statement from the alien, using the Form I-867A&B. Ensure that all the facts of the case and the alien's willingness to withdraw are recorded. See Chapter 17.2 for procedural guidance relating to withdrawal of application for admission.

(8) Aliens applying for admission under the Visa Waiver Program (VWP) are not subject to expedited removal, regardless of their true and correct nationality. If an alien applying under the VWP indicates an intention to apply for asylum or a fear of persecution, the alien will be referred to an asylum officer using the supplemental notice, Information about Threshold Screening Interview, to determine whether an exception to the Agreement applies. If the alien does not qualify for an exception, he or she will be refused entry under the VWP and returned to Canada. If an exception applies, the asylum officer will refer the alien to an immigration judge for an asylum-only hearing using Form I-863.

a. Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).

b. Complete the sworn statement using Form I-877.

c. Partially complete the Form I-275 with the identifying information, noting the facts of the case and the inadmissibility in the narrative. Indicate that the alien was referred for a Safe Third Country Agreement threshold screening.

d. Fill out both portions of the Form I-94W, but do not endorse the form. Include it in the A file.

e. Give the alien the supplemental notice, Information about Threshold Screening Interview.

f. Arrange for detention in accordance with local procedures and fax the sworn statement, Form I-275 and the threshold screening notice to the appropriate Asylum Office.

g. If the alien does not qualify for an exception, he or she will be returned to Canada. ICE DRO will normally transport the alien to the port of entry. The CBP Officer will complete the Form I-275, checking the box for VWP refusal. Forward a copy of the I-275 to the appropriate Consulate.

h. Endorse both portions of the Form I-94W "refused in accordance with INA section 217"; line stamp or enter the date, POE and the officer's stamp number. Also note the reason for refusal (ground(s) of inadmissibility) in block 13 of the form.

Returnees - Aliens who entered the United States either legally or illegally and are returned from Canada pursuant to the Safe Third Country Agreement.

The courts have long held that aliens who entered the United States, either legally or illegally, then traveled to a foreign country, who were refused entry and are returned, are deemed not to have departed the United States. Matter of T, 6 I&N Dec. 638 (BIA 1955). [see also GenCo Opinion 89-17]. Thus, aliens who apply for admission to Canada but are returned to the United States after having been returned by Canada pursuant to the Agreement are not arriving aliens and therefore not subject to expedited removal. These aliens will be processed as if apprehended or encountered within the United States. Depending on their status, they may or may not be placed in removal proceedings. These aliens may be processed either by port of entry personnel, or turned over to Border Patrol or ICE for processing in accordance with existing local practice.

For persons traveling from the United States and seeking refugee status in Canada, Citizenship and Immigration Canada (CIC) will make the determination of whether the

exceptions to the Agreement apply directly at the port of entry at the time of the refugee claimant's application for admission to Canada. Those who qualify for an exception to the Agreement will be permitted to file their refugee application in Canada. Those who do not qualify for an exception will be returned to the United States the same day in most cases. CIC officials will fax an IMM 5569 to the designated U.S. official at the receiving U.S. port of entry and will normally contact the U.S. port of entry by telephone to confirm that the alien is returning. CIC will provide the alien with a copy of the IMM 5569, the negative eligibility decision, and a copy of the removal order. CIC will seize all fraudulent documents and fax copies to U.S. officials. They will return legitimate documents to the alien. Most ineligible applicants will be returned unescorted from Canada in their own vehicles, although uncooperative or dangerous persons may be escorted. Ineligible claimants will usually be returned to the United States through the same port of entry.

Port Directors should coordinate with their local Canadian counterparts to determine the most effective and efficient means of notification or return in accordance with each country's procedures.

Aliens being returned from Canada will be processed according to their status in the United States.

(1) Aliens who are in status upon being returned from Canada after applying for asylum there.

Aliens who are in status upon their return from Canada may be released and given a Form I-589, Application for Asylum and for Withholding of Removal, if they wish to file their claim with an Asylum Office in the United States. Asylum claims made at an Asylum Office are "affirmative" applications filed voluntarily by aliens.

(2) Aliens who entered the United States illegally or are out of status upon return from Canada after applying for asylum there.

Aliens who have not been admitted or paroled into the United States are amenable to removal proceedings before an immigration judge based on inadmissibility under section 212(a) of the Act. Aliens who were admitted to the United States but who are out of status are subject to removal proceedings before an immigration judge based on deportability under section 237(a) of the Act. Upon their return from Canada, these aliens may be placed in removal proceedings pursuant to section 240 of the Act and may be detained in accordance with current ICE detention priorities if they are subject to mandatory detention, are of national security interest or their release would represent a danger to the public, or meet other established detention criteria.

a. Removal hearings under section 240of the Act

(i) General. Upon an alien's return from Canada, a determination must be made as to what section of the Act that alien will be charged with. Regardless of whether the alien is being charged under section 212(a) or section 237(a) of the Act, the officer will institute removal proceedings under section 240 of the Act by issuance of a Form I-862, Notice to Appear. However, since these are not arriving aliens, other aspects of processing may differ from those used for arriving aliens. If the alien indicates a fear of persecution or return, advise the alien that he or she may present his or her asylum claim during removal proceedings before the immigration judge. If the alien does not understand the English language, an interpreter must be used to ensure that the alien is appropriately advised of the process and rights.

(ii) Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).

(iii) Process the alien in IDENT/ENFORCE, using the NTA module. DO NOT use the Inspections/NSEERS module for these cases, as they are not arriving aliens/applicants for admission. The modules designed for non-POE cases automatically record the disposition according to the module selected, and include the appropriate forms, which may not be included in the Inspections/NSEERS module. Select Detained (WA/NTA) with I-217 or Released OR (NTA) with I-217, as appropriate. Complete the biographical information on the initial screens.

(iv) Complete IDENT processing. Notate "Safe Third Country Returnee" in the comments field, followed by any other appropriate notations. This will assist in tracking and verifying that the alien was returned by Canada pursuant to the Agreement.

(v) Complete Form I-213, Record of Deportable/Inadmissible Alien.

(vi) Take a sworn statement, giving the administrative warning of rights. Although ENFORCE contains Form I-215B, Record of Sworn Statement in Affidavit Form, it is preferable to take a sworn statement in question and answer format to fully establish inadmissibility or deportability. Use Form I-263A as the jurat.

(vii) Complete a Form I-265, Notice to Appear, Bond, and Custody

Processing Sheet, to provide a record that uniform criteria were applied in making the custody determination. Current detention priorities must also be considered in making custody decisions.

(viii) Complete Form I-826, Notice of Rights and Request for Disposition. Every alien apprehended within the United States and charged with inadmissibility or deportability must be given a Form I-826. Provide the alien with a copy of the form.

(ix) When a minor (a person under the age of 18) is returned from Canada, he or she must be given a Form I-770, Notice of Rights and Disposition. If the minor is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the minor in a language he or she understands. Minors should be treated in accordance with the *Flores v. Reno* Settlement Agreement. The terms of that agreement were incorporated in an INS memorandum dated July 19, 1997, entitled Settlement of Jenny Lisette Flores, et al., v. Janet Reno.

(x) Prepare an original and two copies of Form I-826, Notice to Appear. An NTA for a non-arriving alien may be issued only by those officers specified in 8 CFR 239.1(a). This includes Directors of Field Operations, Port Directors, and Deputy Port Directors. The Commissioner has also delegated this authority to Assistant Port Directors. The Form I-826 shall be prepared in the name of and signed by the authorizing official. If the alien is being held in DHS custody, indicate that fact and the location of the facility where the alien is detained in the address block. If the alien is not being held in DHS custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33, Change of Address Form, to report any change of address. If the alien's mailing address is different from the physical address, include both. Check the appropriate block to indicate whether the alien is present without inspection, overstay or status violator. If the alien had been granted voluntary departure previously and failed to depart within the time specified, the NTA should contain a factual allegation stating when the voluntary departure was granted and for what period of time, and that the alien did not depart within that time frame.

Check any other appropriate boxes on the form immediately following the "provisions of law" section. The NTA must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing, following established local procedures. In situations where a hearing date and time cannot be obtained, indicate " to be set" in the appropriate data field. No hearing date may be scheduled earlier than 10 days from the date of service of the NTA (to allow sufficient time to obtain counsel and prepare for the

hearing), but the form includes a waiver that the alien may execute in order to obtain an earlier hearing date. Fill in the appropriate address and room number for the Immigration Court where the alien is to appear. On the reverse of the Form I-862 is critical information concerning representation, conduct of removal proceedings and the consequences of failure to appear at the scheduled hearing. These should be specifically explained to the alien in a language the alien understands.

The NTA must be served on the alien within 24 hours of issuance where DHS proposes to set bond or detain the alien. Have the alien sign the original, place the original and a copy in the A file, and serve the alien a copy. If the file contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the alien's counsel must also be sent a copy of the Form I-862. The officer serving the NTA must execute the Certificate of Service block.

(xi) Provide the alien with a current list of organizations and programs prescribed in 8 CFR 292 that provides free legal services.

(xii) If the alien is to be detained, prepare a Form I-200, Warrant for Arrest of Alien, for the authorizing official to sign. A Warrant for Arrest of Alien may be issued only by those officers listed in 8 CFR 287.5(e)(2) (limited to Port Directors and Area Port Directors) and may be served only by those officers listed in 8 CFR 287.5(e)(3) (includes CBP Officers). A Warrant for Arrest of Alien shall be prepared in the name of and signed by the authorizing official. Follow the local procedures for authorization and arranging of detention.

(xiii) Consult 8 CFR 236.1(e) to ensure that the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official.

(xiv) If qualified, the alien may be released on his or her own recognizance from custody or under bond, as a matter of discretion, pending a removal hearing. Such discretion should be applied only if the alien does not pose a danger to the public and is likely to comply with the terms of the exercise of discretion, or in accordance with detention priorities. Prepare a Form I-286, Notice of Custody Determination, with such conditions as the Director or the Director's designated representative may establish. If releasing the alien on his or her own recognizance, complete Form I-220A. If a bond is required, the amount can be no less than $1500.00. Consult local ICE DRO for bond procedures. Provide alien with a copy of Form I-830,

Notice to EOIR: Alien Address.

(xv) Photograph and fingerprint the alien on FD-249 fingerprint cards (two sets) either manually or through IAFIS, if available. Note the FINS number under Miscellaneous Numbers on back of FD-249. Code the fingerprint cards with the proper United States Code citation. A third copy may be kept at the port.

(xvi) Complete Form R-84.

(xvii) Complete Form I-217, Information for Travel Document or Passport and place in the A file.

(xviii) Coordinate with ICE/DRO, ICE Counsel, and Records for disposition of the A file.

b. Voluntary departure

DHS may permit an alien to voluntarily depart the United States at the alien's own expense in lieu of being subject to section 240 proceedings or before initiation of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B) of the Act. If the alien is granted voluntary departure with safeguards, he or she must depart immediately and under the direct observation of DHS and is not permitted to be out of DHS custody. Since an alien being returned from Canada pursuant to the Agreement may not be granted voluntary departure to Canada and has indicated an intention to seek asylum, voluntary departure will not normally be considered in these situations, except in extraordinary circumstances.

In accordance with 8 CFR 240.25, only district director (CBP Directors of Field Operations) are authorized to grant voluntary departure as a matter of discretion. The processing officer must weigh favorable and unfavorable factors before deciding to offer the option of voluntary departure in each case. Among the factors to be considered include previous immigration violations, age, infirmity, and indications for stricter enforcement policies at a particular location or during a particular time period. The processing officer must be satisfied that the alien has the means to immediately depart the United States at his or her own expense. See Chapter 13 of the Detention and Deportation Officer's Manual for information on voluntary departure.

(i) Once having decided to permit voluntary departure, the processing officer must make sure the alien understands his or her rights contained in the Form I-826. Have the alien initial the block indicating his or her wish to depart the

United States voluntarily. The officer serving the Form I-826 must execute the Certificate of Service block. Give a copy of the form to the alien.

(ii) If the alien elects to waive his or her right to a hearing before an immigration judge, complete the Form I-213 in ENFORCE, using the Full VR module.

(iii) If applicable, cancel the alien's nonimmigrant visa pursuant to 22 CFR 41.122(h)(5) which provides that the nonimmigrant visa should be canceled if an alien is in violation of his or her status.

c. Aliens not entitled to a removal hearing upon being returned from Canada.

Certain aliens are not entitled to formal removal proceedings under section 240 of the Act. The procedures for processing these aliens are described below.

(i) Previously Admitted Crewmember/Violator Returned From Canada.

Crewmembers are not entitled to a hearing before an immigration judge, except for the purpose of resolving an asylum claim. In the case where a crewmember does not wish to apply for asylum in the United States and his vessel or aircraft remains in the United States, he or she may be issued a Form I-99, Notice of Revocation, and returned to the vessel or aircraft for removal. If the vessel or aircraft has departed the United States, the crewmember may be ordered removed by issuing a Form I-259, Notice to Detain, Remove or Present Alien, to the transportation line or agency representing the transportation line on which the alien served. Procedures for removal of crewmembers are described in Chapter 23.10.

If removal occurs within 5 years of the crewmember's landing in the United States, the carrier is liable for the costs of removal. When carrier liability exists, complete and serve a Notice to Transportation Line Regarding Alien Removal Expenses, Form I-288. Expenses billable to a carrier may be tracked and recorded on a Record of Expenses Billable to Transportation Company, Form I-380. Coordinate removal and service upon carrier with ICE/DRO.

If such crewmember wishes to apply for asylum, use the Form I-863, check Box #3 and the appropriate box indicating the status of the crewmember before serving, and forward the form to the appropriate Immigration Court. Crewmembers may be detained if they present a danger to the public or a risk of absconding. In the absence of these adverse factors, they may be released on bond as a matter of discretion. Crewmembers who were present

in the United States before April 1, 1997, are an exception and must be placed into removal proceedings under section 240 of the Act.

(ii) Visa Waiver Program (VWP) Violators Returned From Canada.

Aliens who were admitted under the VWP pursuant to section 217 of the Act and who violated their status or stayed beyond the 90-day admission period permitted by statute are not eligible for a hearing, except in cases involving an asylum claim. In the case where there is no asylum claim or the asylum claim is denied, such alien may be ordered removed by means of a letter from the Port Director. This letter should advise the alien of the determination that he or she violated the conditions of admission under the VWP and that he or she is being removed from the United States without a hearing before an immigration judge. Sample language to be used may be found in Appendix 14-2 of the Detention and Deportation Officer's Field Manual.

Coordinate with local ICE/DRO concerning detention or release of the VWP violator and the service of the Form I-288, Notice to Transportation Line Regarding Alien Removal Expenses, and the Form I-259 on the carrier that brought the alien into the United States, if the alien originally arrived by air. See IFM Chapter 15.7 (g)(6), VWP Removal Procedures, for detailed instructions on processing procedures.

In the case where an alien wishes to apply for asylum, complete Forms I-863, check Box #3 and the appropriate category within that paragraph, and refer the alien to the Immigration Court for the asylum hearing in accordance with IFM Chapter 15.7(g)(4), VWP Asylum Requests and Procedures.

In situations where a removal order under section 217 has been issued and there is limited detention availability, Form I-220B, Order of Supervision may be issued by ICE/DRO to allow the alien to voluntarily report to a DRO office for verification of departure.

d. Aliens previously ordered removed, who reentered the United States and are not admitted to Canada after applying for asylum there.

Section 241(a)(5) of the Act provides that the Attorney General [now the Secretary of Homeland Security] shall reinstate, without referral to an Immigration Court, a prior order against an alien who illegally reentered the United States after having been deported, excluded or removed, regardless of the date that the previous order was entered. An alien who voluntarily departed the United States while under a final order of exclusion, deportation or removal,

and then illegally reentered the United States is also subject to this provision.

Reinstatement is not applicable to an alien who was granted voluntary departure by an immigration judge and left the United States in compliance with the terms of that grant. These aliens are subject to the removal provisions under section 240 of the Act. If, however, the alien stayed beyond the period authorized for voluntary departure, or left of his or her own volition while a final order was outstanding (i.e., the alien "self-deported"), the alien is subject to reinstatement.

Before processing the alien for reinstatement, you must verify the facts relevant to reinstatement of a previous order. Regulations at 8 CFR 241.8 require that the officer must establish: whether the alien was subject to a prior order; the identity of the alien, that is, whether the alien is in fact an alien who was previously removed; and whether the alien unlawfully reentered the United States. You must obtain evidence of the prior removal order, which may be faxed from the National Records Center or the office currently holding the file. In cases of disputed identity, verify identity through fingerprint comparison. Consider all relevant evidence, including alien's statements, other evidence in alien's possession, and database checks to determine whether last entry was lawful. In any case in which you are not able to satisfactorily establish the facts, the previous order cannot be reinstated, and the alien must be processed for removal through other applicable procedures, such as removal proceedings under section 240 of the Act.

On November 18, 2004, the 9th Circuit Court of Appeals ruled in Morales-Izquierdo v. Ashcroft that the reinstatement provisions in 8 CFR 241.8 violate the statutory requirement that removal determinations may be made only by immigration judges. Therefore, in processing aliens returned pursuant to the Agreement at Canadian land border ports of entry, the reinstatement provisions may not be applied in the states of Washington, Idaho, Montana, and Alaska.

In preparing cases for aliens who are subject to reinstatement, officers should use the following procedure. See Chapter 14.8 of the Detention and Deportation Officers Field Manual for additional information.

(i) Create a work folder and obtain database printouts containing the previous order. Track the work folder in NFTS.

(ii) Complete the Form I-213 through the Reinstate Deport with I-217 module in ENFORCE. If the alien admits to being previously ordered removed or granted voluntary departure, the Form I-213 must so indicate. If a fingerprint hit verifies such previous adverse action, include that information on the Form I-213. If the alien disputes the fact that he or she was previously removed,

the alien's fingerprints must be compared with those in the A file documenting the previous removal to affirm positively the alien's identity. The fingerprint comparison must be completed by a locally available expert or by the Forensic Document Laboratory via electronic means.

(iii) Take a complete sworn statement from the alien using Form I-877, concerning all pertinent facts. Use Form I-263A, Record of Sworn Statement, as a jurat to close the statement. The record of sworn statement must document admissions, if any, relevant to determining whether the alien is subject to reinstatement, and whether the alien expressed a fear of persecution or torture if returned on the reinstated order. The sworn statement must include the following question and the alien's response thereto: "Do you have any fear of persecution or torture should you be removed from the United States?" If the alien expresses a fear of persecution or torture, once detained, ICE Office of Detention and Removal Operations will refer him or her to an asylum officer who will determine whether he or she has a reasonable fear of persecution or torture. Provide a copy of the statement to the alien and retain copies for the file.

(iv) Complete the Form I-871, Notice of Intent/Decision to Reinstate Prior Order. Sign the top portion of the form, provide a copy to the alien, and retain the original for the file. You must read, or have read, the notice to the alien in a language the alien understands. The alien signs the second box of the file copy and indicates whether he or she intends to rebut the officer's determination. In the event that the alien declines to sign the form, note the block that a copy of the form was provided and the alien declined to acknowledge receipt or provide any response.

(v) Execute Form I-205, Warrant of Removal/Deportation.

(vi) All reinstatement cases must be detained. Follow the local procedures for authorization and arranging of detention of the alien so that ICE/DRO may complete the reinstatement of a final order.

e. Aliens who have been ordered removed from Canada, are transiting the United States pursuant to that removal, and claim asylum.

CBP may parole an alien deportee from Canada through the United States, in accordance with section 212(d)(5)(A) of the Act. These aliens will be escorted by Canadian officials. Pursuant to the Agreement, if the alien deportee claims asylum while transiting the United States, he or she shall be returned to Canada for consideration of the claim.