

AILA CBP OFO Liaison Committee Meeting with U.S. Customs and Border Protection

Office of Field Operations (OFO), Washington D.C.

Wednesday, October 19, 2022

The CBP Office of Field Operations (OFO) Liaison Committee of the American Immigration Lawyers Association (AILA) thanks CBP for another opportunity to meet and discuss issues of mutual concern. The committee reiterates its belief that frequent and frank communications advance the mission of CBP, while providing clarity to the public on current immigration policies, procedures, and practices. The committee further thanks CBP for the willingness to continue to hold in-person meetings as the fast-changing world frequently presents new or novel issues. We are grateful for CBP's commitment to an open dialogue with AILA to further strengthen and reaffirm our liaison relationship with CBP. We look forward to continued dialog with the various components under the CBP umbrella.

SEAL

1. It is AILA's understanding that Systems Enforcement Admissions Liaison (SEAL) messages from the Systems Enforcement Analysis and Review (SEAR) office are disseminated only to Directors, with each Director's office responsible for disseminating further into the field. AILA is concerned that at least in some cases/in some districts, this guidance is not being disseminated to the field.
 - a. Can you describe how the SEAL messages and other guidance are designed to ultimately reach the inspection officers in the field making admission determinations?

Professionalism Service Managers

2. AILA applauds CBP for posting the list of the Professionalism Service Managers (PSM) at [Professionalism Service Managers | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/professionalism-service-managers). In the past, CBP had explained the PSM's role of improving the agency's commitment to customer service and transparency to the traveling public and stakeholders by focusing on promoting professionalism in addition to providing customer service. CBP envisioned the PSMs providing the Port Director with analysis of complaint trends and professionalism best practices identified in the port.
 - a. Can you confirm that the role of the PSMs remains the same as explained above?
 - b. Will CBP be adding more PSMs to the posted list?
 - c. Is CBP making any further efforts to notify the public of the PSMs and their role (i.e., putting posters at airports and other POEs, advising passengers, media campaigns)?
 - d. Can you confirm that a PSM may be contacted after an adverse action to solely raise issues of professionalism and customer service?
 - e. If a Port does not have a PSM listed, is it appropriate to contact the PSM for the Field Operation Office with jurisdiction over such Port?

Social Media Influencers and Incidental Work

3. With the advent of remote work and the advancements within social media, work is not nearly as easy to define as it once was. In our previous meetings, we discussed *Matter of Hira* 11 I&N Dec. 824 (BIA 1965) (tailor who took measurements for clients in the U.S. for suits to be manufactured in Honk Kong) as authority to evaluate these complicated cases. Further precedent is also relevant such as *Matter of W* 6 I&N Dec. 832 (BIA 1955) (Canadian truck drivers who delivered and picked up fish from the US; activity regarded as “incidental” to principal work in Canada) and *Matter of B and K* 6 I&N Dec. 827 (BIA 1955) (Canadian farmers that sold part of their produce in the U.S.). These cases outline that the significant factors for consideration are: (1) is there a clear intent on the part of the applicant to continue his or her foreign residence and not to abandon his or her existing domicile; (2) are the principal place of business and the actual accrual of profits *predominantly* in the foreign country; and (3) are the various entries to the United States of plainly temporary nature (although the business activity itself need not be temporary and may be long continued).
 - a. Can CBP confirm that these factors are relevant authority and still being considered when assessing an applicant’s intent to enter the US as a visitor?
 - b. Does CBP consider applicants who are bona fide visitors to the U.S. who incidental to that status may post on social media and obtain revenue from such efforts to be admissible in visitor status if they predominantly perform these activities and are compensated abroad?
 - c. Does CBP consider those who engage in work for an employer not located in the United States and not affecting the U.S. labor market while a visitor to the U.S. to be admissible in such status if the accrual of profits and the principal place of business remains abroad?
 - d. A CBP Spokesperson recently stated that the visa waiver program prohibits any pet-sitting, house-sitting, or childcare in exchange for room and board.¹ Although there may be situations where a clear exchange of services and receipt of profits takes place exclusively in the United States, this statement seems overly broad and would even seem to prohibit close relatives, such as grandparents, from coming to visit newborn grandchildren, for example, which is clearly a permitted activity under the definition of a visitor for pleasure under 22 CFR § 41.31(b) (visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature). Given the lack of public guidance on a variety of visitor activities, would CBP consider issuing more formal guidance to the public?
 - e. Can CBP explain any training provided to the field or through SEAL or other means regarding these complex issues?

Continued COVID-19 Flexibility

4. On July 25, 2022, USCIS made their scanned signature policy permanent. Would CBP consider making a similar policy formal, public, and consistent across all POEs and PFIs

¹ See <http://www.thedailybeast.com/us-customs-and-border-protection-denies-asking-madolline-gourley-about-abortion-at-lax>

that accept TN and L-1 applications? See <https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities>

5. AILA appreciates the March 5, 2021, guidance issued through the Carrier Liaison Program outlining the current policy for boarding Lawful Permanent Residents. CBP indicated at the previous [liaison meeting in November 2021](#) that it is not currently changing its policy on LPR boarding. Can CBP confirm that the guidance is still in effect and has not been modified?

Admissions Involving Multiple Forms I-797

6. In situations where nonimmigrants travel in a category requiring a Form I-797 (e.g., H-1B, O-1), present two Form I-797 Approval Notices in the same category with sequential validity (e.g., due to USCIS approval of an application for extension of stay), some POEs admit the nonimmigrant for the maximum validity period. This is consistent with USCIS regulations, for example, 8 CFR 214.2(h)(13), which states “a beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends.” Other POEs will only admit based on the current, earlier expiring, Form I-797 Approval Notice, on the rationale that the Form I-797 with a future validity date will take effect in the future, despite the fact that the CBP I-94 admission record was issued “last in time.” For example, an H-1B nonimmigrant travelling on 11/1/22 presenting two Form I-797s, one expiring 12/1/22 and another approving an extension of stay from 12/2/22 to 12/1/25 may be admitted to 10/31/25 (as the maximum admission period is 3 years), but nonimmigrants are frequently only admitted until the expiration of the earlier of the two petitions, in this example, only until 12/1/22. Limiting the admission to the current Form I-797 can be interpreted as CBP taking away the extension of stay that was previously granted by USCIS.
 - a. Can CBP confirm that assuming there are no other factors that would limit the admission (e.g., expiring passport), the appropriate admission is the maximum permissible admission period for a H-1B nonimmigrant of 3 years from date of admission?
 - b. In regards to the admission of a dependent H-4 under the same facts, can CBP confirm that assuming there are no other factors that would limit the admission (e.g., expiring passport), the appropriate admission is the maximum permissible admission period for a H-4 nonimmigrant of 3 years from date of admission, whether that dependent has his/her own Form(s) I-797 Notice of Approval, or is seeking admission based on the principle applicant’s Form(s) I-797 Notice of Approval?
 - c. If so, will CBP send a notice via SEAL that this is an appropriate admission procedure?

Dependent Admissions

7. We appreciate that in our [March 2022 meeting](#), CBP OFO confirmed in the context of Automatic Visa Revalidation that Nonimmigrant Dependents are “admitted under the same term of admission as the principal unless there are other factors to limit the admission such as a passport expiring prior to the principal’s term of admission” and that “[a] dependent should maintain a copy of the principal’s Form I-797 or a copy of the principal’s Form I-94 to ensure that the dependent receives the same term of admission as the principal.” However, both in the AVR context and in non-AVR cases (where the dependent applicant has a valid visa stamp), CBP officers at various ports of entry continue to demand that a dependent must have his/her own Form I-797, and cannot be admitted until the end validity date of the principal’s term of admission, contrary to the guidance noted above in Question 6.. H-1B regulations at 8 CFR 214.2(h)(9)(iv) state that “*The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, **may be admitted**, if otherwise admissible, as H-4 nonimmigrants **for the same period of admission or extension as the principal spouse or parent.***” Similarly, L-1 regulations at 8 CFR 214.2(l)(7)(ii) and (17)(v) state that spouse and unmarried minor children are entitled to “***the same period of admission and limits as the beneficiary***” and “***the same nonimmigrant classification and same length of stay subject to the same limits as the principal alien.***”
- Does CBP agree that the above-cited regulations encompass the admission of dependents, whether with a valid visa or under Automatic Visa Revalidation, for the same term as the principal, without requiring a separate approval notice documenting a separate extension of stay at time of entry?
 - If so, will HQ share through SEAL or other guidance to the field that beneficiaries may be admitted for the same period as a principal under the regulations?

Mexican TNs and New Reciprocity Limits

8. Previously, Mexican TNs had a visa reciprocity limit of 12 months. However, on June 16, 2022 Mexican TNs can be granted visas with [reciprocity limits](#) of 12 or 48 months. . Per 8 CFR 214.6(e) and (g) TNs may be admitted for a period of three years and readmitted during that period without presentation of a supporting employment letter. Furthermore, the TN category is a non-petition-based category and, other than regulatory limits, the only document that would limit an applicant’s admission is the employment letter described in 8 CFR 214.6(d)(3).
- Can you confirm that a Mexican TN may, after the initial three-year period, apply for readmission under 8 CFR 214.6(g) by presenting a valid unexpired TN visa, evidence of a previous admission and the employment letter described in 8 CFR 214.6(d)(3) to be admitted for an additional three years and/or under the terms of the TN employment?
 - Can you confirm that the CBP systems will not revalidate a previously issued I-94 that would result in a reduced admission time when multiple entries are being made at the land border?

9. There appears to be confusion at the Ports of Entry in interpreting 8 CFR 214.6(i)(2) titled *Readmission at the border* when Mexican TNs attempt to be readmitted on a valid TN visa to change or add employers. On one hand, the regulations states that “[n]othing . . . precludes a citizen of Canada or *Mexico* from applying for readmission . . . for the purpose of presenting documentation from a different or additional . . . employer.” On the other hand, the regulation also states that “Citizens of Mexico *may* present documentation . . . to a consular officer in support” of a TN visa application. Since the regulation uses the word “may” when stating the option to apply for a new visa, it appears to be clear that the regulation does not prohibit Mexican TN applicants to apply for change or addition of employers at the border by presenting the proper documentation.
 - a. Can CBP confirm that Mexican TN applicants can apply for readmission at the border under 8 CFR 214.6(i)(2) and request changing or adding employers?
 - b. If so, will CBP send a notice via SEAL that this is a proper admission procedure under the regulations?

SSA Issues and CBP

10. When legal permanent residents enter the United States for the first time, it automatically puts into production their I-551 card and their Social Security Card with the Social Security Administration Office. However, several members are reporting that Social Security Cards are taking months to be issued due to a SAVE issue. For SAVE to verify a benefit applicant’s status, the agency must have the applicant’s biographic information (first name, last name and date of birth) and a numeric identifier (Alien Number; Form I-94, Arrival/Departure Record, number; Student and Exchange Visitor Information System (SEVIS) ID number; or unexpired foreign passport number). Given that CBP is the agency inputting the initial LPR’s data into the SAVE system, it appears that CBP may be incorrectly adding the SAVE data.
 - a. Can you explain how CBP interacts with SAVE and what the process is to ensure SAVE is updated with the new LPR’s data correctly?
 - b. Is there a timeframe for when CBP provides this information to SAVE? Is there some recent trend/issue for why the SSA is delaying production of these Social Security Cards? Is it something on CBP’s end that you are aware of?
 - c. If our clients in this situation come to us with a SAVE issue, it is supposed to be corrected by the agency that entered the data. How would CBP like us to contact the agency to resolve this? Is this via local port or an email to someone at HQ?
11. Similarly, some members are having issues with NIV cases where TN and Blanket L-1 admissions at CBP are being told by SSA once they arrive to the U.S. and apply for their Social Security Card, that “they cannot locate the person’s admission.” As such, SSA is inquiring into SAVE which is taking up to 8+ weeks with sometimes no resolution at all. One member reports a TN taking 6 months to be verified in SAVE. This is a significant

issue for our first-time NIV-holders who likely have to terminate work in order to wait for their Social Security Card.

- a. Would the same procedure for LPRs be used for NIV-holders? If not, what would be the process for such a person to get CBP to resolve this SAVE problem?
- b. What is the timeframe our clients should “wait and see” if SAVE will resolve itself or not?
- c. Does CBP know what is causing the delay for the SAVE system to reflect the NIV-holder's new status as entered by CBP? Is it triggered by certain factual situations or ports?

12. Individuals with visas under the H-1B1 Free Trade Agreement Nonimmigrant Visa category for nationals of Singapore and Chile have encountered mixed outcomes when applying for admission at U.S. ports of entry, which also affect SAVE verification. The confusion tends to relate to two issues: the three-letter code used to indicate the H-1B1 category and the length of admission.

- a. A specific problem arises with SAVE when a non-petition-based category H-1B1 for Chile or Singapore is admitted as an H-1B. Consequently, when an H-1B1 is submitted for verification through SAVE, the system does not clear them for lack of a petition. Furthermore, some Ports of Entry have stated that the code system only has space for three characters.
 - i. Can you confirm whether the system has a three or four character limit?
 - ii. Can CBP confirm that it has a standard policy that the I-94s for H-1B1 entrants should be marked with the three-letter code “HSC”?
- b. Can CBP confirm that, per INA 214(g)(8)(C), it has a policy that H-1B1 entrants are admitted for a period of one year, even when the LCA and/or visa is valid for longer?

Submission of Form I-407, Record of Abandonment of Lawful Permanent Resident Status at Ports of Entry

13. Many Lawful Permanent Residents located outside the U.S. could previously submit a Form I-407, Record of Abandonment of LPR status at a USCIS international field office. However, with the closure of most USCIS international field offices, USCIS instructions indicate that a Form I-407 may be submitted outside the U.S. *in very rare circumstances* at a USCIS international field office, or a U.S. embassy, or U.S. consulate, such as allowing an expedited application when an individual is applying for an A or G visa. Importantly, the USCIS form instructions also indicate that someone may submit a Form I-407 to a U.S. CBP Officer at a U.S. port of entry.

- a. Some ports of entry have indicated that they will not accept the submission of a Form I-407. Can you confirm CBP’s policy regarding acceptance of the I-407 at ports of entry?

Electronic/Paper I-94 Admission Record Generation

14. AILA is aware of the ongoing expansion of the stampless entry program. Some ports have stated that they are under a pilot program under which the passports of travelers are not being stamped. There have also been reports that Ports of Entry are not issuing I-94s at entry. It is also our understanding that facial recognition technologies are used more predominantly at certain POEs.
- Please provide us with an update on the current state of the rollout of the pilot program for stampless entry at POEs.
 - Please summarize the situations in which I-94s are not issued at entry.
 - Can you provide an update on CBP's use of facial recognition technology? Also, can you explain if there is a recourse for mismatches under facial recognition technology?
15. It is our understanding that admissions of U and T nonimmigrants are not updated to the publicly viewable electronic system for privacy/safety reasons, and that these nonimmigrants must contact a deferred inspections office to obtain documentation of their admission and status. A number of our members have reported difficulties in making this request. Due to disparate ease of obtaining these records from Deferred Inspection offices, is it possible to have paper I-94 automatically issued at POE upon entry?
16. It has come to our attention that some L-1s admitted on a blanket are being issued I-94s with no "admit until" date. Anecdotally, the Seattle CBP Port of Entry (SEA) has told foreign nationals entering on a blanket L-1 that SEA is part of a pilot program where they will not issue an "admit until" date on the electronic Form I-94, but they stamp an "admit until" date in the passport. This appears to conflict with other ongoing policies and initiatives. Can you advise as to what this pilot program is and which ports of entry are participating in it?
17. Members are reporting inconsistencies when applicants with nonimmigrant employment-based visas are crossing the northern border and not being issued I-94s upon entry. In some instances, CBP 'revalidates' a prior I-94, while some applicants have been told that an applicant must always request an I-94 when entering from the northern border. Can you clarify the procedure for entry and how can applicants be assured of being issued an I-94?

I-94 Issues for E-Visa Dependents

18. AILA has received reports that L-2, E-1, E-2 and E-3 Spouses are still being admitted without the E-2S code after January 30, 2022.
- Can CBP confirm that an E Spouse can properly seek correction at a Deferred Inspection Site for an entry after January 30, 2022 that does not have the E-2S code?

- b. Can CBP also confirm that the E-1D, E-2D and E-3D code is no longer a class of admission code under the current CBP system?
- c. Can CBP describe the steps to take to ensure that the S designation is issued upon entry?

I-94 Corrections

19. AILA appreciates the I-94 correction feature on CBP's website at [Ask Us a Question \(cbp.gov\)](https://www.cbp.gov/ask-us-a-question). However, there have been reports of lack of response and that the website does not allow to upload documents.
- a. Can you provide an update as to the functionality of the portal?
 - b. Can you describe how a request for I-94 correction is handled through such portal?
 - c. Can you provide with an estimate response time to requests submitted through the portal?
20. Some ports have stated that the I-94 system is set by default to Eastern Time. This may pose a problem to accurately record entries and departures and may expose to appearances of overstays for certain applicants.
- a. Can you confirm if the I-94 system is set by default to Eastern Time country wide?
 - b. Can individuals request date corrections based on their actual port of entry?

ESTA Admissions and Notice

21. AILA appreciates that CBP provides notice to ESTA admittees that their status is set to expire. However, we have received reports that individuals receive this notice, even if they have already departed. Receiving these notices raises concerns among travelers that their departures have not been adequately recorded in the system and they may experience difficulties returning to the U.S.
- a. Is CBP data relevant to this issue updated by flight manifest information regarding departures?
 - b. Are these generated from HQ or from regional/local field offices?
 - c. Can you provide a preferred course of action for a traveler who has departed the country and receives the above-referenced email notification?

Global Entry

22. Can you provide an update on CBP's efforts to catch up on the backlog of Global Entry applications?

Canada L-1 Applications for Admission

23. At the AILA Annual Conference in New York in June 2022, CBP indicated that the issue of L-1 Applications for Readmission at the Northern Border by Canadians would be jointly reviewed with CBPs partners at USCIS. For context, until 2018, CBP had a practice dating back approximately 20 years of accepting these applications regardless of whether it was for an initial application for admission or a subsequent application for admission. Given that the current practice and policy are potentially violating the USMCA by changing its longstanding practice by refusing to accept these applications, this change of practice has affected a number of companies that operate cross-border businesses. Please provide an update on CBP's discussions with USCIS or other stakeholders on this issue.

Notices to Appear

24. AILA and other stakeholders have noted the trend of migrants released from the border receiving NTAs in which the home addresses appear to be generated by DHS officials. Further, the addresses selected are not a reasonable means to contact the individuals for their court hearings because they are the addresses of various non-profits including legal service providers, shelters, and refugee resettlement agencies that are not associated with the migrants at issue. These groups report receiving numerous EOIR notices of hearing by mail for individuals with whom they are not in contact. In turn, these individuals may receive *in absentia* orders because they are not properly notified of their court dates. We understand from leadership that this CBP practice was supposed to cease as of September 1, 2022, however recent entrant documents indicate that this practice persists. Can CBP describe the steps taken to address this ongoing due process problem and ensure that it does not continue?
25. AILA has noted a trend of Notices to Appear that remain in limbo for extended periods of time prior to being filed with the EOIR, sometimes for longer than a year. For those NTAs issued by CBP, can CBP give a position on withdrawing notices to appear that are aged in the interest of due process and prosecutorial discretion?

Extension of Humanitarian Parole

26. Many of the recent arrivals seeking humanitarian protection have received parole that is only valid for 15 days. Can CBP create a policy to extend the parole documents of these individuals so that they have sufficient time to seek work authorization pursuant to the parole status?

Handling of Personal Belongings

27. There have been complaints about CBP's handling of noncitizens' personal belongings following apprehension at the Southern Border. Reports have been made about Officers throwing away noncitizens' belongings. Can you describe the procedure in place to properly store and track a detainee's personal belongings?

Marijuana Issues – an Update

28. Since 1996, a number of states, and the District of Columbia, have enacted laws to decriminalize the cultivation, possession, distribution, and use of both medical and non-medical (recreational) marijuana in their respective jurisdictions. As of September 2022, 39 states, and the District of Columbia, have legalized cannabis in some form, with 19 states, and the District of Columbia, legalizing recreational marijuana in addition to medical use. (<https://mjbizdaily.com/map-of-us-marijuana-legalization-by-state/>). However, federal law classifies marijuana as a “Schedule I” controlled substance whose manufacture, cultivation, possession, or distribution may lead to criminal and immigration consequences. (See Controlled Substances Act (21 U.S.C. 812)). Admission to a violation relating to marijuana in these states – including working in the cannabis industry - negatively and significantly impacts both non-immigrant visa holders and legal permanent residents’ admissibility into the United States and/or eligibility for citizenship in the United States. As the number of legal marijuana users increases on both sides of the border, and as the possibility of legalization may occur at the federal level, it is important to consider how U.S. Customs and Border Protection (CBP) is focusing its questioning or enforcement tactics when determining admissibility of individuals who lawfully use or cultivate marijuana.
- a. How is CBP currently investigating foreign nationals who work in the cannabis industry in the United States or in other countries? What is the process?
 - b. What is CBP using for guidance to determine an “admission” or “reason to believe,” for instance, of a marijuana violation? If there is no guidance, how are determinations then made?
 - c. For an admission to rise to the level of inadmissibility, CBP must have the person voluntarily admit to all of the elements of the federal marijuana offense, after they were explained to him/her. Is CBP undergoing this evaluation for persons who testify at the border to the involvement in the marijuana industry or use of marijuana?
 - d. Have CBP officers been instructed to search cell phones for information about recreational marijuana, even when its use was in a jurisdiction where it is legal? If CBP considers recreational marijuana use to be a serious issue, then given the likely confusion in the public about the significant differences between state and federal law, would CBP consider rolling out a public information campaign to warn travelers that marijuana remains unlawful at the federal level? This could be similar to efforts that TSA has taken to prevent passengers from traveling with knives, liquids and gels.
 - e. If someone is found to have committed an inadmissible offense and they request withdrawal of their admission to enter the U.S., would this be honored? Would the data from this inspection be recorded in CBP or other government databases?

Validity of Visas after Restructure and/or Acquisition of Employer

29. There has been concern among members about the validity of employment-based nonimmigrant visas issued under a company after such company undergoes a corporate restructuring and/or an acquisition.
- a. Can you confirm that an employee with a valid E visa from Company A can continue to use the visa after a restructuring and/or acquisition with evidence that they are currently employed by the successor in interest Company B?
 - b. Can you confirm that employees under Blanket L visas from Company A be admitted after a restructuring and/or acquisition with evidence that they are currently employed by the successor in interest Company B?

FOIA Requests Timeframes

30. Members are reporting delays in response to FOIA Requests. They are also reporting problems with the 202-325-0150 telephone number with no response at times. Can you provide an update on FOIA processing?

CBP's Health Screening Questions Related to Pregnancy

31. It was recently reported in the media that a passenger claimed she was asked by a CBP officer if she had had an abortion. CBP's Spokesperson indicated that CBP officer had not used the word "abortion" but rather asked the passenger if she "recently lost a pregnancy". CBP's spokesperson pointed to a November 23, 2021 directive that requires CBP to ask this question. That directive indicated that CBP had 45 days to submit their "policy implementation plans to the Office of the Commissioner for approval prior to field-level dissemination and implementation".
- a. Given the potential for controversy due to the highly charged nature of any such implementation plan, can you confirm what was contained in CBP's policy implementation plan?
 - b. The directive cites to CBP Form 2500 which contains the following two questions: (1) are you pregnant? If so, how many months? and (2) are you nursing? Are these questions asked of all female passengers in CBP custody, whether at a land border, an airport, seaport? If not, what indicators does CBP rely on to determine who to ask?
 - c. Since CBP Form 2500 does not contain the question whether a passenger has "recently lost a pregnancy", can you provide additional details about indicators covered by CBP's policy that would trigger such a question to be asked? Given the highly sensitive nature of female health and privacy issues, AILA believes CBP should have a standardized process.

- d. Can you also confirm that CBP has submitted its implementation plan, and whether the Office of the Commissioner has approved the plan? Could you make any additional details public so that passengers are prepared for these questions ahead of time?