

IFM-Section 17.1(e)

(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.



U.S. Customs and
Border Protection

AGENDA
CBP/Nevada AILA Liaison Meeting
November 16, 2007

- Q: Has the local staff been trained on attorney/client relationship and representation?
- A: Yes, all CBP officers who perform secondary inspections are trained on the client/attorney relationship and it's limitations in regards to the enforcement of the Immigration and Nationality Act (INA).
- Q: Does the local staff recognize just what a G-28 is and do they respect this formal document?
- A: Yes, all CBP officers who perform secondary inspections are trained on, and are familiar with, the G-28 notice of appearance form. See 8 CFR 292.5 (b) as to the limitations of legal representatives in the processing of arriving travelers.
- Q: When entering aliens are placed in secondary inspection and inform the offices that they have an attorney waiting in the entry area what are the responsibilities of the inspector?
- A: 8 CFR 292.5(b) states that "... nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody". The responsibility of the Officer is to notify a relative or a friend that the alien is being delayed or detained by CBP if the processing time takes in excess of two hours.
- Q: Are there local rules and are there printed copies of these rules?
- A: See 8 CFR 292.5(b). There are national guidelines that govern the processing of arriving passengers as well as the detention of inadmissible travelers. These guidelines are part of local operating procedures.

Q: Non-responsive to the request
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A: Non-responsive to the request
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Q: Non-responsive to the request
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A: Non-responsive to the request
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**LOS ANGELES COUNTY BAR ASSOCIATION, IMMIGRATION SECTION
AMERICAN IMMIGRATION LAWYERS ASSOCIATION, SOUTHERN CALIFORNIA
CHAPTER**

**AGENDA FOR CBP LIAISON MEETING
October 18, 2010**

The following are CBP agenda items proposed by members of the Los Angeles Country Bar Association, Immigration Section, and the American Immigration Lawyers Association, Southern California Chapter:

1. Seizure/Forfeiture

A] After a member of the public files a petition for relief from forfeiture, how long does it take before CBP responds? Does CBP have a timeline that binds it for these petitions?

Questions concerning seized or forfeited items can be directed to: Fines, Penalties, and Forfeitures (FP&F) (562) 366-5400. If this question pertains only to travel documents see part B.

B] Non-responsive to the request

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2. Canadian Tourists

A] Non-responsive to the request

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B Non-responsive to the request

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3. Expedited Removal

A] Is there a way for an attorney to request that CBP reconsider a decision to order an expedited removal? Will CBP reconsider its decision if it is provided with evidence that the decision was made in error?

No, an applicant for admission in either primary or secondary inspection is not entitled to legal representation. Generally the Expedited Removal process is completed and the alien returned to his port of embarkation on the same day. The IFM 17.15 Expedited Removal, and 8 CFR Sec. 235.3 Inadmissible aliens and expedited removal, provide detailed and specific guidance and instruction to officers on the questions to consider.

IFM Chapter 2.9 Dealing with Attorneys and Other Representatives

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as

an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the Adjudicator's Field Manual, Chapter 12, and 8 CFR 292.5(b).

INA: ACT 235. 1/(a)(1)(A) Screening

- (i) *In general.-If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.*

(C) Limitation on administrative review.-Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal

B Non-responsive to the request
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Passport Control Muster

Week of Muster:

Topic: Attorney Inquiries Regarding Admissibility Issues.

Reference Materials: Section 235(d)(3), INA; 8 CFR 292.5(b) and the Inspector's Field Manual (IFM), Chapters 2.9 and 17.1(e)

The purpose of this muster is to explain the procedures to be followed when responding to attorney inquiries regarding admissibility issues, e.g., aliens in secondary or deferred inspection and inadmissible aliens who have been removed or who are awaiting departure. No applicant for admission in primary, secondary or deferred inspection has a right to be represented by an attorney - unless the applicant has become the focus of a *criminal* investigation and has been taken into custody. While this bars attorney representation, it still allows a CBP management official to speak with an attorney as a courtesy.

An employee receiving an inquiry from an attorney regarding an alien in secondary inspection shall refer the attorney to the appropriate management official: the Passport Control Secondary Chief or Secondary SCBPO. Attorney inquiries regarding aliens in Deferred Inspections shall be referred to the Deferred Inspections SCBPO or Chief. Only a management official may respond to an attorney inquiry. No non-supervisory employee shall communicate with an attorney in any manner except to refer the attorney to the appropriate management official.

The Chief or SCBPO may, *as a courtesy*, speak with the attorney. (b)(5) (b)(7)(E)

If the attorney offers to present evidence of an alien's admissibility, the Chief or SCBPO should ask the attorney to do so, provided that it will not delay the inspection. (b)(5) (b)(7)(E)

On the other hand, an attorney might seek to make arguments to gain the alien's admission or to advocate for a favorable exercise of discretion, e.g., waiver of documentary requirements (Form I-193), parole for deferred inspection or a port parole. This crosses the line into representation and is inappropriate.

The Chief or SCBPO may inform the attorney of the disposition in a secondary inspection once decision has been made but should not become involved in a discussion of the merits or specific facts of any particular case. The Chief or SCBPO may continue speaking with the attorney if s/he deems it appropriate but shall terminate the conversation when s/he determines that continued discussion is a distraction from the performance of his/her supervisory duties.

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Attorneys requesting additional case information shall be advised to file a request under the Freedom of Information Act (FOIA). Attorneys expressing dissatisfaction with the response provided by any Chief or SCBPO shall be referred to the Passport Control Secondary Chief.

No employee (supervisory or non-supervisory) shall continue a conversation with any attorney who is rude, abusive or threatening. The employee shall refer the attorney to the Passport Control Section Chief. The employee shall not get into any further discussion with this attorney. (b)(5) (b)(7)(E)

[Redacted]

Prepared by:

(b)(6) (b)(7)(C)

Section Chief, Passport Control

Date:

DRAFT

Passport Control Muster

Week of Muster: March 21 thru 27, 2010

Topic: Attorney Inquiries Regarding Admissibility Issues.

Reference Materials: Section 235(d)(3), INA; 8 CFR 292.5(b) and the Inspector's Field Manual (IFM), Chapters 2.9 and 17.1(e)

The purpose of this muster is to explain the procedures to be followed when responding to attorney inquiries regarding admissibility issues, e.g., aliens in secondary or deferred inspection and inadmissible aliens who have been removed or who are awaiting departure. No applicant for admission in primary, secondary or deferred inspection has a right to be represented by an attorney - unless the applicant has become the focus of a *criminal* investigation and has been taken into custody. While this bars attorney representation, it still allows a CBP management official to speak with an attorney as a courtesy.

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Attorneys requesting additional case information shall be advised to file a request under the Freedom of Information Act (FOIA). Attorneys expressing dissatisfaction with the response provided by any Chief or SCBPO shall be referred to the Passport Control Secondary Chief at 310-**(b)(6) (b)(7)(C)** and at **(b)(6) (b)(7)(C)**@dhs.gov.

When an attorney is rude, abusive or threatening, the employee (supervisory or non-supervisory) shall immediately refer the attorney to the Passport Control Section Chief. The employee shall not get into any further discussion with this attorney. If the attorney persists, the employee will politely terminate the call by stating that s/he is no longer authorized to talk to the attorney and is required to hang up by direction of the Passport Control Section Chief. The employee shall then hang up. If the attorney continues to call, the employee will again terminate the call as discussed above. The employee shall then advise the Section Chief of this event by email with copies to the Secondary Chief and Watch Commander.

It is not practical to prescribe the correct response to each attorney call. However, the attachment *Responding to Immigration Attorney Phone Calls* provides some guidance. Please keep a copy of this attachment available for reference when taking attorney phone calls.

Prepared by: **(b)(6) (b)(7)(C)**
Section Chief, Passport Control

Date: March 15, 2010

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Responding to Immigration Attorney Phone Calls

Non-supervisory employees will refer the caller to the appropriate Chief or SCBPO. This management official will follow the below guidelines when taking attorney calls.

Remind the attorney that there is no representation during primary or secondary inspection and that you are taking his/her call only as a courtesy.

If the caller is inquiring about a particular alien, ask for the date, airline, flight# and port of arrival. (b)(5) (b)(7)(E)

Never discuss any case from another POE. If the attorney knows the port of arrival, advise him/her that POE contact information is available at www.cbp.gov at the bottom of the web page. (b)(5) (b)(7)(E)

If the alien is expected to arrive at LAX in the future, advise the attorney that a determination of admissibility will be made upon arrival and that you cannot discuss any case in advance.

If the alien was inspected at LAX, you may advise the attorney of the disposition. If the alien was removed from LAX by CBP, you may advise the attorney of the date of removal and the country to which the alien was removed. If the alien was turned over to DRO for immigration proceedings or to another law enforcement agency for prosecution, you may advise the caller accordingly.

If the attorney asks to speak to an alien still in CBP custody at LAX, re-state the policy on attorney representation in secondary inspection. Advise the attorney that once case processing has been completed, aliens are allowed to make phone calls if such calls will not interfere with departure or transfer to another agency. You may pass the attorney's phone number to the alien is requested to do so but make no guarantee that the alien will call.

If any attorney threatens to file a lawsuit or to contact the media, treat this as threatening behavior. Refer the caller to the Passport Control Section Chief and discontinue the call as discussed in the muster on this subject.

If an attorney calls with a general question regarding admissibility (e.g., documentary requirements for citizens of Antarctica) you can answer if you feel comfortable doing so. Do not research any questions for the attorney. (b)(5) (b)(7)(E)

Finally, always remember that you are free to discontinue the conversation at any time or for any reason by referring the attorney to the Passport Control Section Chief.

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