



Notes from New Jersey AILA Chapter Meeting 1/26/2010

Speakers for US Customs and Border Protection:

Paula Heacock, Branch Chief, Enforcement Operations
Louis Mejia, Supervisor for Admissibility Issues
Kevin Donohue, Deputy Chief, Criminal Enforcement

Arriving Aliens with Convictions

Kevin Donohue spoke about deferred inspection and expedited removal of arriving aliens. He explained that CBP receives a list of individuals on a flight when it leaves an airport abroad. In the time that it takes for the flight to get to the US, using technology, CBP can get a record of conviction from the courthouse. Accordingly, arriving aliens with criminal convictions can be immediately placed in expedited removal proceedings. This is an improvement from the past when the alien would be placed into deferred inspection and told to return with a copy of the conviction. Under that system, many aliens were simply failing to show up at the deferred inspection. The expedited removal option that CBP is exercising with greater frequency has alleviated the burden placed on the deferred inspection system.

Mandatory Detention for Post-1998 Convictions

Officer Donohue pointed out that the law provides for mandatory detention with post-1998 convictions (Section 236(c)). Individuals with these convictions get detained in all cases. Thereafter, NTAs are sent to the General Counsel for legal sufficiency. The General Counsel for CBP is located at 1 Penn Plaza in Manhattan. Consideration will be given to humanitarian needs such as whether the individual is a sole provider for children, and whether he/she has health issues. This procedure is based on a program that was piloted in Atlanta and Miami.

A member asked about whether attorneys would be permitted at secondary interviews. Officer Donohue responded that such a right is not given under the law, but that reasonable requests will be considered on a case-by-case basis (this goes through Judith Altmann, Associate Chief Counsel). The general phone number for the airport is 973 565 8000 (press #1 for the duty supervisor). If the attorney is not permitted to attend, he or she will still be told about what is happening with the case and will be shown a copy of the NTA and be provided with a sworn statement. He pointed out that in cases where the attorney is retained later in the process, and the client does not have a copy of the sworn statement, it can be obtained through a FOIA request. A FOIA request can be made through the General Counsel at the following contact information:

Craig Stahl
FOIA Officer
CBP Office
1 Penn Plaza, 11th Floor
New York, NY
646-733-3200

An attorney can call and ask for the “attorney-of-the-day” and that person will log-in the information.

H-1B Admissions

Officer Donohue maintained that there has been fraud in the H-1B program, and that H-1Bs have been subjected to increased scrutiny at the port of entry. He indicated that officers may call the employer in order to make a determination about admissibility. He stated that while CBP will not permit the alien to call his/her attorney, CBP may call the attorney themselves.

Officer Donohue stated that CBP now has the technology to verify that the person who was interviewed at the embassy is the same person presenting at the port of entry. CBP is also able to access DOL information.

Officer Mejia indicated that he has “read the blogs” and knows that there is a perception that the H-1B denials are being experienced disproportionately by Indian Nationals. He categorically denied this claim. He also denied allegations that “rovers” are removing foreign national from the initial line and sending them directly to secondary inspection. He further noted that there are 4 flights arriving from India per day, and those flights have the most H-1Bs onboard.

Members expressed frustration with the fact that they are preparing their clients for interviews, and arming them with the necessary documentation, but the clients are still being denied visas and/or entry. This is particularly common where there is “seconding” occurring; these are complex, but legitimate, employment relationships that are even difficult for attorneys to understand. Officer Mejia indicated that members were doing exactly what they should be doing, (*i.e.*, sending the foreign national to the port of entry well-armed with documentary evidence). Members also asked whether CBP was re-adjudicating cases based on a recent CIS memo. Officer Mejia indicated that the memo was not controlling on CBP, that they did not read it as calling for a re-adjudication, and that they were not re-adjudicating cases.

Members asked whether H-1Bs might be given a choice to withdraw their application for admission instead of being removed. Officer Mejia said that it would depend upon the circumstances; the Chief Counsel would have to be consulted. Another member suggested that, rather than removing an individual, CBP could issue an NTA. This

procedure would permit an attorney to assist the foreign national. It was agreed that this would be the subject of further discussion between CBP and AILA NJ.

Closing of Varick Street Facility

Members inquired as to whether the closing of the Varick Street Facility would place extra pressure on NJ sites. The officers indicated that this would not occur because New York and New Jersey are entirely separate entities.

I-751 pending

Officer Donohue stated that when an alien presents an I-551 stamp, the alien will always be placed in secondary inspection. He also pointed out that this was true of anyone traveling with any document that did not have a biometrics identifier (e.g. I-551 stamp, I-797 extending the Conditional Residence for one year pending I-751 adjudication. In response to a member question, he indicated that there is no way for an officer to access any system that will tell him/her whether the alien has filed for divorce.

Expired Green Cards

Aliens who have been out of the U.S. for more than 6 months, or who have expired green cards, will be placed in secondary. Officer Donohue indicated that they have information about how long each LPR has spent outside the US.