

## Questions and Discussion Topics

### U. S. Customs and Border Protection—NAFSA Liaison Call

May 21, 2014

*These notes were taken by NAFSA members during the liaison call. They have not been reviewed by the agency officials who participated. They reflect information provided by government officials in an informal setting. Liaison notes and summaries are best used as general information concerning current agency processes and policies, and it is important to recognize that agency processes and policies are subject to change. NAFSA notes and liaison summaries do not constitute legal advice.*

#### **Representing U. S. Customs and Border Protection (CBP):**

- Jeni Best, Supervisory CBP Officer, Admissibility and Passenger Programs
- Guy Cange, Branch Chief, Enforcement Programs Division, Admissibility and Passenger Programs

#### **Representing NAFSA:**

- **ISS-RP Travel Subcommittee:** Marisa Atencio, Dan Berger, Ben Colston, Mona Foroughi, Cara Frankowicz, Mihwa Lee, David Muusz, Holly Nigorizawa, Hamel Vyas; ISS-RP Chair: Joann Ng Hartmann; and NAFSA staff

#### **Temporary employment visa questions (H-1B/TN, etc.):**

1. When an H-1B employee returns under Automatic Visa Revalidation from Mexico or Canada by air or land before the beginning of an approved extension, but with the H-1B extension approval/I-94 in hand, will he/she get a new I-94 record? If so, what expiration date will be given on the new I-94 upon reentry?

Prior to automation, a new I-94 record was not created. However, after automation at least in some cases new I-94 records have been issued using the earlier H-1B approval end date.

We can think of six travel scenarios involving automatic revalidation:

*Automatic revalidation scenario grid*

	<b>1</b>		<b>2</b>		<b>3</b>		<b>4</b>		<b>5</b>		<b>6</b>	
	air	land										
<b>Enter</b>	x		x		x			x		x		x
<b>Exit</b>	x			x		x		x	x		x	
<b>Reenter</b>	x		x			x		x		x	x	

Scenario 1 = enter by air; exit by air; reenter by air

Scenario 2 = enter by air; exit by land; reenter by air, etc.

**ANSWER: Automatic visa revalidation rules have not changed. CBP officers at land border crossings and other POEs can revalidate an existing I-94 record or issue a new one depending on individual circumstances. If the foreign national was initially admitted after implementation of automation, the most recent date of admission (i.e. when using automatic revalidation to reenter) will be reflected in system. The I-94 print out from the system will have this date. Date of admission is no longer a search criterion on I-94 website, so the record can be found without having the correct date.**

**If the foreign national was initially admitted pre-automation, the person should have a paper I-94. No new admission date will be reflected on the I-94, but should be reflected on the I-94 website.**

**When a foreign national enters via airport, a new stamp should be placed in the passport. If the foreign national enters via land crossing, no new stamp is placed in the passport.**

**Form I-94A is treated the same way as the regular I-94 for automatic visa revalidation purposes.**

2. Will CBP consider adding a field to the I-94 system to allow for an annotation for:
  - the name of the petitioner for H-1B or other nonimmigrant employer-sponsored categories?
  - the SEVIS ID of the I-20 or DS-2019 under which the admission was made, for F, M and J categories?

On the old paper card, the note on the back of the form was used for this purpose.

List A on the I-9 asks for a passport and form I-94. Without the annotation, there is no way to be sure that the individual disclosed the appropriate employer, school, or exchange sponsor at the time of entry to the U.S.

**ANSWER: There is no plan to do this in the near future, though the information is in the system. When automation was designed and rolled out, the form questions had to remain the same. Even though it was a best practice to report the SEVIS ID or employer on the paper I-94, it was not a regulatory or statutory requirement. CBP may consider adding this information to the passport stamp.**

3. Our members report inconsistencies in TNs' experiences at the POE, even among individuals from the same country, in the same designated profession classification, in the same field of study/research, and who present the same/similar set of supporting documents. Some TNs have reported that CBP officers particularly scrutinized their employment letters.
  - Could you please review with us what supporting documents CBP expects to see when an individual seeks admission in TN classification?
  - Are there additional items—beyond standard information about the position title, salary and contract period—that would be helpful in the letter?
  - Do you have any other advice that we can share with TNs and prospective TNs to make their admission as smooth as possible?

**ANSWER: All admissions are discretionary and considered separately. CBP will look for a statement (letter or contract) addressing:**

- **Outline of professional activities**
- **Duties**
- **Education**
- **Compensation**
- **Period of stay**
- **Licensure requirement**
- **Labor certification for nurses**

**A checklist has been provided to POEs to ensure uniformity when admitting individuals in TN status. This is an internal document, rolled out approx. 1 month ago [April '14]. May be posted online.**

**F-1/M-1 student questions:**

4. We would like to bring to your attention that we continue to see instances in which people are admitted into the U.S. as students:
  - long after having missed the I-20 program start date

- even though their SEVIS status has been terminated
- after the I-20 program end date (expired I-20)

Also, some members have reported that M students experience a higher rate of I-94 record errors, particularly those entering from Vancouver by air, arriving to San Diego by air, and entering by car at Blain. Many M-1 students entering via Northwest POEs have been given incorrect expiration dates.

We acknowledge that CBP officers must quickly process a large volume of nonimmigrants from many different classifications, but we wonder what steps CBP takes to ensure that officers fully understand the F and M student classifications and that they have the necessary information to admit only those who are eligible.

**ANSWER: This issue should be addressed through SEVP to ensure SEVIS is up to date for CBP. CBP is working with SEVIS to avoid admissions of ineligible individuals. Admission decisions are based on the paper documents presented to CBP (i.e. the I-20). CBP should consider the dates on these documents when admitting a foreign national. If the process is not followed, send names and document numbers to Jeni Best through NAFSA IssueNet.**

On occasion, specific POE data for an individual is associated with the incorrect SEVIS record. Can you describe the path of port of entry data from CBP systems to SEVIS? Can you recommend how to correct this kind of error?

**ANSWER: Data interface is through ADIS. There is no additional information at this time. CBP does record SEVIS # in its system, which interfaces with SEVIS. Jeni Best will look into matter of data flow and bring information to NAFSA AC in San Diego (May 2014)**

**Travel while adjustment of status pending:**

5. Occasionally, an H-1B nonimmigrant is out of the country when his/her adjustment of status is approved. What should the traveler present to the CBP officer at inspection upon return to the U.S. if the traveler has :
  1. a valid Advance Parole document but has not yet received the green card?
  2. a valid H-1B visa but has not yet received the green card?
  3. a valid Advance Parole document or H-1B visa, and the green card has arrived at his/her home in the US?

Is the answer different if the H-1B returns a while after the I-485 is approved? For example, what if the I-485 is approved in March, but the scholar is scheduled to be

teaching a class abroad until June and plans to come back after the assignment?

**ANSWER: The answer depends on the scenario. CBP can take discretionary measures by deferring inspection, or by verifying whether LPR status was indeed accorded. CBP may also issue waiver of documents (for a fee). The foreign national may also apply for a Transportation Letter at the U.S. post abroad. Such a document permits the airline carrier to allow the foreign national to board the plane. A fee may be required to obtain the Transportation Letter.**

**An H-1B has dual intent and may be used to enter after the green card is issued.**

**If the green card was sent to a U.S. address while the foreign national is abroad, have the card forwarded to the person while abroad.**

**A foreign national must have a valid legal document to enter the U.S. and to board the airplane. Once a person is issued a green card, the AP-document is no longer valid.**

6. F-1 students and J-1 exchange visitors are admitted into the U.S. for "D/S." However, their electronic I-94 records on the CBP website do not indicate "D/S." Instead, our members report that records are annotated "No Date" for the status expiration date. This inaccurate annotation causes them problems when applying for benefits, such as a SSN or Driver's License. Is this a training issue for CBP? How should affected individuals have this corrected? Visit a deferred inspection office?

**ANSWER: If the I-94 was created PRIOR to automation, the date might reflect "no date" due to data entry error. In this case, Deferred Inspection ought to assist. If no paper I-94 record is available, the foreign national should file the I-102 to obtain a correction. Deferred Inspection may assist as well, but are not required to do so.**

**If the I-94 with "no date" entry was issued AFTER automation, alert Jeni Best. The I-94 system is coded to reflect "D/S" for individuals in F and J status.**

7. If a student reenters the U.S. with a new SEVIS record with a new SEVIS ID, is there a way to ensure that the new SEVIS ID number is noted by the CBP officer? Should the

student specifically mention this on inspection?

**ANSWER: CBP officer will review documents. A CBP officer will document the new SEVIS ID. Foreign national is not required to point out new number to officer.**

**General questions:**

Thank you for the improvements to the look-up process and the work that CBP officers have done in helping our students and scholars find and correct electronic I-94 records over the time since the electronic system was rolled out. This effort is much appreciated.

8. Some members report that large volume Ports of Entry (for example, Atlanta, GA) are not always able to handle corrections of errors or assist an individual to locate the I-94 record that he or she has been unable to find. Will CBP consider having a national customer service telephone number or email that individuals admitted to the U.S. can use to seek assistance with I-94 record problems that are not being resolved by the nearest CBP deferred inspection location? Individuals who cannot access their I-94 or have it corrected in a timely fashion face many problems, such as difficulty applying for OPT or other benefits.

**ANSWER: CBP has no intentions of establishing a telephone number due to lack of funding and staffing. Deferred Inspection sites and CBP websites are available for this purpose.**

9. We have created a tip sheet to assist our members in locating electronic I-94 records. It is located here:

[http://www.nafsa.org/Find\\_Resources/Supporting\\_International\\_Students\\_And\\_Scholars/Committee\\_Updates/ISSRP/Electronic\\_I-94\\_Record\\_Retrieval\\_Tips/](http://www.nafsa.org/Find_Resources/Supporting_International_Students_And_Scholars/Committee_Updates/ISSRP/Electronic_I-94_Record_Retrieval_Tips/)

If any of these issues have been resolved, please let us know so we can update and focus the tips. Also, please let us know if there are other tips that we should include.

**ANSWER: Deferred Inspection should not turn away people. Sites have been instructed to assist with the correction of all CBP-originated errors, including I-94 errors. If turned away, request again or ask to speak with a supervisor.**

**If a foreign national traveled abroad while EOS application was pending and EOS was approved while abroad, USCIS-issued I-94 (on I-797) takes precedence over CBP issued I-94. (“Last Action Rule” applies.) Deferred Inspection may also correct the I-94 in such cases.**

10. A member reports that an F-1 student was told by a CBP officer at the Phoenix airport that the electronic I-94 record disappears once it is accessed and printed. In general this doesn't seem to be true, but we would like confirmation since this particular student's I-94 record did disappear after she printed it. Might this be because she had a return flight scheduled? Is there any reason, other than a student leaving the U.S., that an electronic I-94 record would disappear?

**ANSWER: The record should not disappear; the departure shouldn't affect the I-94 record. This is a recent system enhancement. If this is an issue, send to Jeni Best.**

**Departures are recorded via flight manifest and Canadian records (at Northern border). Departures at Southern border are harder to capture. An implied departure might be recorded upon re-entry.**

11. We would like to encourage CBP to establish a routine of correcting the I-94 records of individuals who have left the U.S., when such a correction is necessary. There are times when an error may not be discovered until after the foreign national has left the U.S. Our understanding is that CBP generally will not correct such a record. However, we appreciate CBP's willingness to make corrections in cases where the past electronic record is important to establish eligibility for immigration benefits. For example, a foreign scholar came to the U.S. on the Visa Waiver Program to give a series of lectures. The expiration date handwritten on the stamp in the passport was 89 days from entry, the expiration date in the electronic record was 91 from entry, and the visitor left on day 90. The issue was not discovered until after she left the U.S. CBP was willing to send an email confirming that the visitor had left on day 90 and was in compliance with the Visa Waiver Program. The email will be very helpful if the visitor returns to the U.S. and needs to show she did not violate the VWP (which would make her ineligible for the VWP).

**ANSWER: For foreign nationals admitted to the U.S. in a status with a standardized maximum duration, the date of entry is considered day #1.**

**Some records may not list a location. This could happen in several instances, i.e. when implied departure is recorded, if deferred inspection updates the record or if another agency records a benefit.**

**If there are any discrepancies in the record, CBP has formal way to request for the issue to be addressed: DHS TRIP. Using that system, the foreign national can sign a waiver and provide documentation. This system is used throughout DHS.**

12. NAFSA has urged CBP to publish the Officer's Reference Tool (which we understand will replace the *Inspector's Field Manual*), redacting law enforcement-sensitive portions as necessary. We see this as a mechanism for informing travelers about what to expect in the inspection process, helping them gather the necessary documents and information, and generally improving the process. Are there any updates on CBP's consideration of this recommendation?

**ANSWER: This tool is currently under review. It is a slow process. There is no timeline for completion. Once completed, it will be designated for law enforcement use and will not be released.**

13. The I-94 retrieval website has been updated to include a preface page on the "Get I-94 Information" page that requires the user to affirm that:

"You are only seeking records about yourself, or you are acting as the **authorized representative** or legal guardian of the person whose records you are seeking. You are not authorized to access this website to retrieve records of another person unless you are the person's **authorized representative** or legal guardian."

Some DSOs have asked how "authorized representative" is defined for this purpose. As you know, DSOs, Responsible Officers, and university staff that process employment-based petitions are frequently asked by the nonimmigrants they advise to assist them in locating I-94 records. This is a great service to the nonimmigrants, and reduces the work of deferred inspection sites and ports of entry, who would otherwise have to field many more inquiries about locating I-94 records. Our understanding that the "authorized representative" attestation is meant simply to communicate that nobody should attempt to access another's I-94 record unless the owner of the record has authorized the individual to do so, and that any individual

that the owner of the record specifically asks to help locate his or I-94 record in the system would constitute an “authorized representative.”

Such a definition has been applied in other contexts. For example, the Affordable Care Act provides this definition of “authorized representative:

Someone who you choose to act on your behalf with the Marketplace, like a family member or other trusted person. Some authorized representatives may have legal authority to act on your behalf. <https://www.healthcare.gov/glossary/authorized-representative/>

- Can you confirm our understanding of the definition of “authorized representative” for purposes of retrieving an I-94 record on the i94.cbp.dhs.gov website?
- What kinds of “authorization” would you foresee?
- Could you add a definition of “authorized representative” to the I-94 FAQs consistent with the above, as the healthcare.gov website has done for its users?

**ANSWER: CBP took into consideration suggestions from NAFSA and other stakeholders. It is in the process of updating the language on the website to clarify that the user should have the express consent of the foreign national to access the record. Such consent can be verbal.**