

NAFSA/DHS Customs and Border Protection Liaison Call

March 22, 2011

Table of Contents

Possible variance in CBP and DOS records concerning applicant.....	1
NSEERS Updates.....	2
Correction of SEVP Address on Form I-515A.....	3
Interagency Consistency Regarding Names.....	3

These notes were taken by NAFSA members during the liaison call. They reflect information provided by government officials in an informal setting. They 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.

1. Possible variance in CBP and DOS records concerning applicant

Occasionally we hear from colleagues that a student or scholar has been denied admission to the U.S. and told to return home and apply for a new visa only to have the embassy/consulate confirm that the current visa is, in fact, valid. Also, occasionally we hear that a student or scholar's visa is cancelled by CBP, the student or scholar instructed by CBP to go home and apply for a new visa, and the embassy/consulate does not know why the visa would have been cancelled or the student would have been so instructed.

Here's a recent example with a few more details:

A member reports that one of her continuing PhD students from Egypt was prevented from boarding his connecting flight in Istanbul because the airline staff received (and showed him) a "Notice to Carrier" from CBP indicating that he should be denied boarding and referred to the U.S. Embassy/Consulate for further instructions

As instructed, he applied for a new visa. According to the student, the consular officer didn't have any information about this notice or indication that he should not be issued a visa. The officer cancelled his valid F-1 visa and told him to reapply. In the meantime, the embassy is trying to get more information from D.C. on this event.

The student has been a special registrant since 2005. He has always completed exit interviews in the past. When he last entered in August 2010, he was told at a POE that he

would not need to “special register” when he next traveled, and he received an I-94 with the notation “NEX.”

Can you offer any insight into what might cause such a situation? Can you offer any information about the “Notice to Carrier” mechanism?

A “Notice to Carrier” is an anomaly for CBP; this is highly unusual. CBP will review this notice and get back to you with more information. When our personnel advise a carrier not to board someone, that guidance typically is given verbally. It is important to note we are not *directing* the carrier not to board the person; we are only giving them an advisory. Our role in a foreign country is strictly advisory; we have no authority there.

This particular situation is highly unusual. For a person to come to the US, have the visa cancelled, and be returned without knowing is almost impossible. We have to base our decision for inadmissibility on the Immigration and Nationality Act. Withdrawal of a person’s application for admission is at CBP’s discretion as is the decision to remove someone from the US and not allow them entry. However, CBP has to charge the applicant with a specific ground of inadmissibility as per the INA. CBP cannot arbitrarily cancel the visa. The visa doesn’t belong to CBP; it belongs to the Department of State. And the visa only gives the traveler the right to travel to the US and knock on the door and ask for permission to enter. That CBP officer at the port of entry then does an interview, and, with all the documentation, makes the determination of admissibility. If the officer determines the person is not admissible, s/he has to charge them with a ground of admissibility, and it results in a case with an A # and a full-blown, drawn-out file that has to be created.

When an alien has been exempted from the NSEERS registration process, the officer then writes “NEX” next to the admission stamp, showing that traveler has been exempted from NSEERS registration for that particular trip. Subsequent trips would then be judged separately from the previous one. Each application to enter is viewed separately. A foreign national would not know s/he is subject to NSEERS registration until s/he arrives at the port of entry and is interviewed at primary inspection.

In this particular case, this person would not be subject to the NSEERS exit procedure?

That’s right. CBP management at the port of entry has been delegated the authority to determine on the spot if a traveler would be subject to Special Registration. Management can also determine if the traveler would be subject to all, some of the process, or not subject to NSEERS registration. For instance, the person could be subject to registering into the US but not subject to registering on exiting the US. The management at the port has the authority to decide about registration in the best interests of the US and/or in the best interests of the traveler.

2. NSEERS Updates

Can you share any recent developments in the NSEERS program? For example, we hear of students and scholars seemingly subject to NSEERS who are told by CBP Officers that they may discontinue registering (as in the scenario above). How is this decided? Is the process the same at every POE? Can you shed any light on the criteria Port Directors use to grant waivers (as described at <http://www.ice.gov/nseers/>)? Do you expect the program—in light of USVISIT, for example—to be phased out?

The process is status quo. CBP implemented policy changes in 2009, where the port management was delegated the authority to determine who was not subject to NSEERS at the port. CBP continues to do our job in protecting the borders against illicit acts and acts of terrorism, but there has been more policy issued to make things easier for those who might be subject to NSEERS registration while still accomplishing our mission. DHS is currently conducting a comprehensive review of the NSEERS program, and once that review is complete, further program changes may be implemented. For the most part, the person on the initial entry will receive a packet of information (“Walk-away Materials”) on departure registration requirements. If they do not receive the paperwork, that’s a good indicator that they may not be required to register on departure—it’s not absolute, though. Frequent travelers may apply for an NSEERS waiver prior to travel from the port of entry they plan to use to enter the US, and these waivers are often approved within two to three months. But a person traveling for the first time will not be eligible for a waiver. Port management may also give a permanent, tangible waiver on the spot. We are working hard to make some changes in the NSEERS program.

3. Correction of SEVP Address on Form I-515A

Can you provide any update on CBP efforts to ensure that POEs using the current I-515A format—especially for the latest SEVP HQ address? We continue to receive reports that many POEs are still using forms from 2007 and prior with outdated information.

We did send out guidance that the current I-515A has a publishing date of June 20, 2010, and no other I-515A should be used. CBP will have that field guidance out again by the end of this week.

4. Interagency Consistency Regarding Names

Is CBP coordinating with SEVP and DOS on updating the naming convention guidelines for students and EVs that are due out soon? Can you provide an update?

CBP does use standard naming conventions, the *Law Enforcement Guide to International Names*, which is the same as ICE uses. CBP is actively involved with the changes being made and soon to be published by SEVP and DOS.

Note: The link to the *Law Enforcement Guide to International Names* can be found at: <http://www.scribd.com/doc/40396167/ROCIC-Law-Enforcement-Guide-to-International-Names>