

AILA HOUSTON CBP MEETING QUESTIONS OCTOBER 8, 2021

Preliminary Discussion:

During the summer of 2021, CBP Houston inspected approximately 85% fewer passengers than during the same period in 2019. For the month of September, the volume was approximately 75% of the 2019 numbers for the same period.

Some CBP officers from the Houston area have been detailed to work on the southern border surge in undocumented entries.

FAA follows CDC requirements regarding vaccination requirements. While ultimately CBP decides admission issues, the airlines decide who boards the plane following FAA guidelines. CBP fines airlines that allow foreign nationals to board planes without proper documentation.

Questions Presented in Advance:

1. It appears that the travel history of LPR is no longer available on the [I94.cbp.dhs.gov](https://i94.cbp.dhs.gov) website. Does CBP still track the travel history of LPRs? Is there a way to access this information online?

CBP discontinued access to the entry and exit information for U.S. permanent residents through the <https://i94.cbp.dhs.gov/I94/#/home> web portal due to Privacy Law concerns. In the ensuing discussion, AILA pointed out that the availability of entry/exit information was extremely helpful for residents applying for naturalization and that the Privacy Law concerns previously had been addressed allowing the posting of such information.

CBP Houston Field Office (HFO) continues to track LPR entries and exits, but no longer makes the information publicly available on the CBP website. CBP was unable to provide any insight on why the change occurred. The information may be accessed through a FOIA. CBP does not have control over the information provided on a FOIA as CBP does not prepare the FOIA reports.

2. Does CBP track departures of nonimmigrants? Does CBP Houston imports information from NIIS and, if so, is it also recording departures of persons whose nonimmigrant status has changed or been extended with USCIS?

CBP HFO reported that changes and extensions of status should now be reflected in the <https://i94.cbp.dhs.gov/I94/#/home> database.

CBP tracks departures by air or sea via manifest provided by carrier or CBP. Those who are admitted or depart under C and D status are automatically recorded. For others, departures are recorded in 3 ways:

- a. Report exits by foreign national who drops off I94 receipt at drop box at border.
- b. Report exits by surrendering I-94 to CBP officer or commercial carrier.
- c. Send proof of exit to CBP.

If the foreign national does not drop off or surrender the I-94, the departure will be determined upon re-entry to the United States. If re-entry prior to the expiration date, foreign national should present evidence of departure to prove timely exit.

3. Does CBP track entries and exits on the I94 travel history of Mexican citizens using a BCC through the land border?

Yes. Passports for all persons entering on the southern border should be examined and electronically read when an individual enters the U.S. However, a Form I-94, admission record is created only for individuals seeking entry to travel beyond 25 miles into the U.S.

4. Would CBP admit an applicant who has a valid L1 visa, with a valid USCIS L1 petition but with an I129S petition not stamped by USCIS when the L1 status was extended? USCIS is issuing approvals of the extensions without stamping the I129S. It takes months to get the USCIS to stamp the I129S petition.

CBP reviews admissions on a case-by-case basis. If the I-129S petition is not stamped, it should not trigger a removal charge, absent any other grounds of inadmissibility. If a valid L visa and USCIS approval notice is presented, CBP can verify the approval in the system.

AILA Committee Observations: Absent a specific reciprocity limit, an L visa should be issued for a period of 5 years. An initial individual L petition or Blanket L petition can have a maximum validity of 3 years. After approval of an extension of an individual L petition, USCIS issues a new Form I-797 which may be presented with the still-valid 5-year L visa to apply for admission to the U.S. After approval of an extension of a Blanket L petition filed with USCIS, USCIS should issue both a new Form I-797 and an endorsed Form I-129S petition which may be presented with the still-valid 5-year L visa to apply for admission to the U.S.

Reportedly, USCIS in many cases has not sent a copy of the endorsed I-129S petition to attorneys without additional requests to USCIS. AILA national recently posted a Practice Pointer on this issue. Refer to AILA Doc. No. 21100706 | Dated October 5, 2021.

5. When filing a Freedom of Information Act request with CBP, for records at port of entries, CBP responds that CBP does not have records of apprehensions made by Border Patrol before 2000. What is the procedure to have access to CBP records prior to 2000?

The Department of Homeland Security and CBP were created on November 25, 2002. Apprehension records prior to that date should include a request for records created by the Department of Justice, Immigration and Naturalization Service as well as DHS CBP records. If records are not provided, follow the FOIA appeal process. USCIS kept all records prior to the creation of CBP.

6. In guidelines released in November 2020, the CBP Houston Field Office (HFO) outlined the substantive and procedural requirements for requesting an exception to the travel restrictions imposed by then-existing presidential proclamations suspending entry to the U.S. by persons present in certain countries during the 14-day period prior to seeking entry to the U.S. Since that time, some of the proclamations then in place have expired or been rescinded and new proclamations suspending entry to the U.S. due to the on-going pandemic now are in effect. Please confirm what changes have been made to the substantive and procedural requirements for requesting an exception based on 1.) humanitarian need to travel; and 2.) national interest activities.

Under current interdepartmental guidelines, applicants for National Interest Exceptions (NIEs) must apply first to the Department of State at a U.S.

consulate for an NIE. CBP HFO will consider NIEs for persons outside the U.S. who have been waiting more than 14 days for an NIE determination from a U.S. consulate.

If an individual was present in the U.S. and then departed, CBP HFO will require the individual to wait at least 30 days for a consular determination of an NIE prior to considering an NIE request. Persons previously present in the U.S. will be required to demonstrate both the urgent reason for the departure as well as the urgent reason for their return to the U.S.

CBP NIE is valid for 30 days. DOS NIE is valid for 1 year.

7. Has CBP HFO received guidance on standards to apply when deciding whether an individual will be engaged in commercial activities in a key role that support a critical infrastructure in the U.S. such that approval of a national interest exception is appropriate?

CBP HFO applies USCIS CISA guidelines (see, <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>) to evaluate whether an individual's intended activities in the U.S. will support a critical infrastructure industry. However, each NIE determination is made on a case-by-case basis.

8. For individuals present in the U.S., will CBP HFO consider approval of a request for an exception in advance of the individual's departure if the request is based on 1.) humanitarian need to travel; or 2.) national interest activities

In very limited circumstances, CBP HFO will consider an NIE request on a humanitarian basis for persons present in the U.S. prior to their departure. This would be only for unusual or compelling circumstances for persons experiencing documented urgent humanitarian hardship.

9. The email designated for requesting an exception to the travel restrictions for the DFW airport (including Dallas, Austin, and San Antonio) specifically references 212(f) requests. The email designated for Houston references the "iahadmissibilityteam." Given the broader title of the Houston email address,

does CBP HFO prefer a specific subject line entry to allow for efficient routing of 212(f) requests?

The “iahadmissibilityteam” email address was created specifically for receipt of NIE requests. Such requests emailed to that address are received directly by the team dedicated to reviewing NIE requests. CBP HFO receives approximately 10 to 12 NIE requests each day.

10. Does CBP HFO decide national interest exception requests for professional athletes? If so, please confirm the specific information required to decide the request.

Generally, CBP does not receive and decide sports league NIE exception requests at the port level. CBP HQ has made blanket sports league NIE approvals.

11. Waiting time for a nonimmigrant visa application appointment at some U.S. consular posts ranges from six months to more than a year. Pursuant to INA 212(d)(4), the documentary requirements of a nonimmigrant may be waived in certain circumstances. Reportedly, the CBP LAX office has provided pre-clearance for individuals with a documented urgent need to travel based on an approved nonimmigrant petition, who previously held a nonimmigrant visa in the same category, and either is not subject to a health-related presidential proclamation travel restriction or has been outside of any country subject to a travel restriction for 14 days. Would CBP HFO consider a request for a waiver of travel documents under such circumstances?

No. CBP HFO will not consider waiving nonimmigrant visa documentary requirements for persons in possession of a Form I-797 Notice of Action approving a nonimmigrant petition seeking admission on an urgent basis. Airlines are fined by CBP if they allow foreign nationals to board without proper documents.

12. If an LPR who has been out of the country for over a year and in possession of an unexpired green card, enters the United States with an SB-1 visa, what is the procedure followed by CBP at the airport? Does CBP collect the green

card and re-issue a new one? Or does CBP collect a package from the US Consulate that approved the SB-1 and orders a new card to be produced?

CBP will provide specific guidelines as to what procedure is followed by CBP at the airport when the SB-1 visa is presented.