

## **Notes from the JFK Port of Entry Tour: 4-9-2014**

### **Contact Information:**

24 hour telephone number: (718) 553-1648 – Ask to speak to a Deputy Chief or a Second Line Manager.  
Deferred Inspection: (718) 553-5499 – M-Th 9am - 2pm for walk-in – Room 11-161 by carousel #8.

*A few points to mention from the officers:*

- During the summer JFK sees 50,000 passengers a day.
- If a passenger is held overnight he/she stays at Terminal 4.
- Soft secondary is usually for students, i.e. if the SEVIS form isn't updated, etc.
- Officers advise students to have as much info/documentation with them when they travel.
- When the officer sees a terminated SEVIS record, the POE has no legal authority to admit the person into the U.S. So, have students bring as much information as possible including an emergency contact. Even if it is an auto-termination, the POE officer will not necessarily know the reason for the termination as the record just shows up as terminated. Make sure students have documentation to show that he/she is enrolled and registered, then CBP may have discretion to admit.

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### **Q & A:**

Q: Are there better times to call Deferred?

A: For I-94 issues it is best to call M-Th from 9am – 2pm. Walk-in times are very crowded, especially with the automation of the I-94. Due to the increased volume, JFK is asking people to show up instead of calling. Any Deferred Inspections unit can take questions from any airport. i.e., Newark can take calls for JFK problems.

Q: What fields do you see in SEVIS?

A: Financials, DSO remarks and notes, reasons for the termination if given, DSOs phone numbers but the DSO has to be available to take the call. The more detailed the remarks, the better.

Q: Under what circumstances would CBP call the school but not the DSO? For example, CBP called the academic department but not the DSO.

A: When a DSO or PDSO's information is not readily available, an officer will google the school to get a hold of someone. Please note that not all CBP officers have access to SEVIS. In addition, an officer may have to call other offices at the school if a DSO or PDSO could not be found during the weekend.

Q: When an officer sees a list of DSOs on SEVIS - How does an officer determine who to call?

A: An officer will try any of them until he/she gets someone who can help, to an extent. If an officer has made an effort to contact the school but could not find anyone, the student may be turned back or detained.

Q: Student was admitted for initial entry, but had problems entering in the middle of the semester at POE.

A: If there is an adverse action on the student's record in the middle of the semester, POE systems will have an alert on the student's record. Whatever action is taken (at school or involving law enforcement) will be on their record. For example: Previous withdrawal of petition for admission at any

POE will be noted in student's record. If information on a student's visa does not match up with the biometrics, a CBP officer can cancel the visa on the spot. Any action taken by CBP will be transferred to the Department of State: Consular Affairs system. Any notes or narrative a CBP officer make on the record will be forwarded. This is due to enhancement in information sharing between DOS, USCIS, CBP, ICE, and other agencies. Anytime a student is fingerprinted due to an arrest, the adverse action will show up in CBP's alert system. These students will be referred to secondary inspection.

Q: I-94 system: Global Entry vs. Automatic Passport Control (APC). Why are students showing up with definite end date on their online I-94 forms?

A: Most common mistake happens when a student goes through Automatic Passport Control (APC). These machines are only for tourists on B1/B2 visas at pre-clearance ports. A student is not eligible to use these machines. **Students should not use the APC kiosks.** When a student mistakenly uses these machines, their online I-94 forms will have problems and they are technically out-of-status. However, in most cases, CBP is willing to fix these records. The students who mistakenly used the APC kiosks must return to Deferred Inspection to fix their records.

The two kiosks, Global Entry and Automatic Passport Control, have different requirements and eligibility. Students must enroll in NEXUS in order to take advantage of the Global Entry program and kiosks. Students are eligible for the Global Entry program and will receive an online I-94 if entering under Global Entry. Automatic Passport Control (APC) is available to US Citizens and Canadians only. APC kiosks are only for B-1/B-2 visa holders.

Q: Students' I-94s are not coming up at all when they go through Global Entry.

A: Students must first enroll and register through NEXUS at enrollment centers outside of the U.S. There are no NEXUS enrollment centers in the U.S.

Q: I-515A – not getting paper at the Canadian border. Students are told to go to the website.

A: Students are supposed to get paper I-94s at land borders. Officers at JFK cannot comment on what transpires at the Canadian border. Students should know what they need upon entry – obtain an admission stamp (F-1, D/S or J-1, D/S) at secondary inspection. Students' I-20 'N' # should be noted by the stamp. Students must go to secondary inspection to get the entry stamps. If a student is on a bus, car, or train, s/he will have to get off and ask for the stamp at secondary inspection.

One issue at land borders is that there are custom officers and immigration CBP officers. The two sets of officers have differing priorities. If a student is driving through the land border and is inspected by a custom officer, the officer will not know to refer the student to secondary inspection for a stamp. Therefore, students should have an idea what they are supposed to do at land borders.

Q: Should students be getting admission stamps at every *air* port of entry?

A: Yes, but at the land border you may want to get a new stamp. At *air* ports of entry you will get an admission stamp.

Q: With automatic revalidation or reinstatement, should students still get a stamp?

A: Yes, they should still get a stamp at the land border even on automatic revalidation.

Q: What should a student do when taking a cruise?

A: There are different regulations on cruises for air ports of entry vs. land and sea ports of entry. Another issue is that it depends on the electronic capability at the departing/admitting port of entry.

Q: I-515 – When would you give an I-515 vs. keeping a student overnight?

A: It depends on what is on the SEVIS record. If the record is active or under initial, and the student is missing an I-20, then a CBP officer will issue the I-515. If the record is terminated or cancelled then the officer would keep the individual overnight because CBP cannot issue I-515.

Q: What happens to a student if CBP decides to seek adverse action?

A: CBP will book the next flight back to where the student came from. If there is no flight available, then the student will either stay overnight at the airport or be transferred to a CBP facility which is currently in New Jersey. At this point, ICE's Enforcement and Removal Operations will take over and will make sure the student is put on a flight back.

Q: Who pays for the flight when a student has to go back?

A: The airline may use the other portion of the student's round trip ticket or they will have to take them back home because the liability is on the airline for putting someone who is not eligible to be admitted on board.

Q: Can students buy a one way ticket or must they buy a round trip ticket?

A: They *should* have a round trip ticket if living in a foreign country but they can have a one way. Having a one way ticket is not a reason to deny entry.

Q: Does having a round trip ticket affect the online I-94? Advisers have reported that some students cannot find their online I-94 record when they have round trip tickets. Some were told that it is because CBP's system thinks they have left the U.S. at the return trip date.

A: This issue was due to a glitch in the CBP system. The program should be fixed within the week. The last admission will be listed on the I-94 regardless of the outbound flight.

Q: If a student tries to enter the U.S. under OPT with an EAD card but no job, does the student have to show a letter from the employer at the POE?

A: The student is supposed to have a job offer. Officers will be looking for the letter but they are really looking at the EAD. A student can travel while an I-765 is pending but technically if there is a pending I-765 and the student leaves the U.S., he/she is abandoning the application. However, that is under USCIS jurisdiction.

Q: What if a student tries to enter the U.S. under the grace period on an old I-20 that has since been shortened?

A: This student will be sent to secondary inspection to determine admissibility because this information is only available at secondary inspection's SEVIS access.

Q1: In regard to the passport expiration date, if it is less than 6 months what will happen?

A1: The rule is that a passport must be valid for at least six months. However, an officer can make an exception and it sometimes depends on the country. An officer will make a determination on a case by case basis.

Q2: Will the student be fined when s/he does not have a passport valid for at least six months?

A2: The student will not be fined. Only airlines can be fined, not the individual. If a student tries to enter without a passport that is valid for at least six months, s/he can apply for a waiver of a

visa/passport on form I-193 which costs \$585. A CBP officer has discretion to waive the fee but is unlikely to do so.

Q: What do we do if a student is always sent to secondary and he/she is not given a reason?

A: CBP can't always tell us why. Advise the student to ask the officer/supervisor to do a PLOR at the airport which will look into additional databases if all information is still the same. Another option is for the student to enter a request for a fix via TRIP to remove the flag. The systems CBP uses are shared by many other government agencies. CBP cannot dictate what gets put in or taken out by other agencies.

Q: POE officers have been sending students back to their schools to 'fix' the flagged SEVIS records however there is nothing wrong in SEVIS and nothing to fix. Why is this happening?

A: This happened as a result of the Boston bombing for a quick fix on 'N' numbers and subsequently has been changed so this shouldn't be a problem any longer.

Q: A student was admitted as an O-1 by mistake but the student refuses to leave. Is this allowed?

A: This is not a question CBP can answer. In CBP's eyes, the individual is technically in status. However, the individual may not be in status if he/she applies for benefits with USCIS after admission. For example, if CBP admits a tourist for 1 ½ years and not 6 months then that is CBP's error and CBP cannot find the individual inadmissible. However, if the tourist stays for the 1 ½ year then applies for change of status in the U.S. USCIS may view the time the tourist stayed after the six months as unlawful and thus the tourist has been out of status for one year.

Each traveler to the U.S. has a purpose. If someone is admitted as a student, he/she should be going to school full-time according to the regulations. If someone is admitted as an O-1 extraordinary individual, then that person is limited to doing what is on the approved O-1 petition. If a student is mistakenly admitted as an O-1 but is going to school instead of performing work in the O-1 field, then this student is out of status in the eyes of USCIS. If this mistake was caught early, CBP usually will be able to fix the I-94 to indicate F-1 student with the current admit until date. However, if the student with the admission mistake wants to take advantage of the mistake, he/she may have to look at consequences to future petitions with DHS.

Q: Can a student with a terminated record come back in with a new I-20 to regain F-1 status?

A: The student will probably be sent to secondary inspection. The officer will look at the first visa and will look at all the facts, including visa applications and what they said on the DOS visa application. CBP officers have access to DOS visa applications. If there is conflicting information on the student's records, CBP will deny entry.

Q: When that situation happens, do you send the student home or would it be expedited removal?

A: There are four grounds for removal and it is determined on a case by case basis. Students, however, are not usually put in expedited removal. Expedited removal occurs mostly with fraud/misrepresentation cases or working without employment authorization. Here are the differences between expedited removal and withdrawal:

Expedited Removal: There is no judicial review. After looking at records and questioning the individual, CBP decides that an individual is not admissible and is barred. A sworn statement will be made and signed with notation of the section of law under which this action is taken. There is

an automatic 5 year bar for expedited removal. If the barred individual attempts to enter the U.S. during the 5 year bar he/she will be criminally prosecuted.

Withdrawal: For minor offenses, CBP will give the individual the option to withdraw his/her application for admission to the U.S. Most individuals will go home on a plane, fix the problem, and return to the U.S. If an individual refuse to withdraw his/her application to admit, then he/she has the option of appearing before a judge to determine admissibility.

Q: This question is in regard to low residency programs. If the program is an 18 month program but the student also spends time abroad (eMBA for example), should the individual come in on a business visa when on business in the U.S., or come in on F-1 for the whole program duration? What should the student do?

A: Good luck! The biggest problem would be with USCIS and the break in status. CBP won't have a problem entering them. However, you don't want them to misrepresent themselves at the POE. If the individual is coming in as a student then he/she should come in as a student. If he/she is coming in on business then come in on a business visa. The individual should always enter how they intend to be on each visit.

Q: Canadians and TN – problems entering?

A: Since the automated I-94, these individuals are no longer considered 'NC' or *Not Controlled*. Now every Canadian is given an I-94 for 6 months. There are no problems with TNs at JFK. Usually TNs are done at the northern border. Tell individuals to hold on to their I-94s.

Q: If an individual enters as a tourist and takes a non-credit class while touring. Is this considered incidental?

A: If the class is incidental there is nothing wrong with doing that. Just do not hide true intentions at admission.

Q: If a continuing student who is active in SEVIS transits through the US to another country, will this be a problem?

A: This depends on what is the intention of the individual? If the intention is to transit then your intention is not to enter as a student but to transit. Technically everything is based upon what the intention of the individual is at the time of admission.

Q: Why are there U.S. agents in Ireland?

A: It is a preclearance port, and this is the case in Vancouver, Toronto, and Abu Dhabi. It is up to the country as they are the ones who pay for it. In Abu Dhabi it depends on the airline.

Q: How often will officers ask for funding documentation?

A: If something needs further clarification then the student should be carrying it just in case.