

INS Insp. Field Manual 17.15

United States Department of Justice  
Immigration & Naturalization Services

Inspector's Field Manual

Updated Through March 2001

I. Policies and Procedures: Application for Admission.  
Chapter 17: Inadmissible Aliens

17.15 EXPEDITED REMOVAL.

(a) Inadmissibility. An alien found to be inadmissible solely under section 212(a)(6)(C) or 212(a)(7) of the Act may be ordered removed by a Service officer at the port-of-entry without a hearing before an immigration judge. Referred to as expedited removal, this procedure was added to section 235(b)(1) of the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), [Pub.L. 104-208](#). The provision itself became effective April 1, 1997. This new process gives immigration officers a great deal of authority over removal of aliens and will remain subject to serious scrutiny by the public, advocate groups, and Congress. All officers should be especially careful to exercise objectivity and professionalism when refusing admission to aliens under this provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her.

Arriving aliens who are inadmissible under section 212(a)(6)(C) or (7) are subject to expedited removal under section 235(b)(1) of the new Act. If 212(a)(6)(C) and 212(a)(7) are the only charges lodged, the alien must be processed under expedited removal and may not be referred for an immigration hearing under section 240. If additional charges are lodged, the alien may be referred for a section 240 hearing, but this should only occur in extraordinary circumstances. Generally speaking, if an alien is inadmissible under 212(a)(6)(C) or (7), additional charges should not be brought and the alien should be placed in expedited removal. Aliens charged with grounds other than 212(a)(6)(C) or (7) should be referred for a hearing under section 240. There will be very few instances where it will be advantageous to the Service to lodge additional charges and institute section 240 removal proceedings if a solid expedited proceeding can be concluded. Even in criminal cases, an expedited proceeding will normally be the preferred option.

If the alien appears to be inadmissible under the provisions of section 235(c) of the Act as a terrorist or other special interest case, refer to Chapter 17.7 or, in appropriate circumstances, detain the alien for removal proceedings conducted by the Alien Terrorist Removal Court under Title V of the Act.

The authority to formally order an alien removed from the United States, without hearing or review, carries with it the responsibility to accurately and properly apply the grounds of inadmissibility. Any immigration officer issuing an expedited removal order and any designated supervisory officer concurring on an expedited removal order must have completed Phase I of the official 96 Act Training Program prepared by the Training Division. Phase I training was also incorporated into the curriculum of all IOBTC classes which were graduated on or after June 3, 1997 (class numbers IOBTC-264 and above).

The Service retains the discretion to permit withdrawal of application for admission in lieu of issuing an expedited removal order. Provisions for withdrawal are now contained in both statute and regulation, with specific guidance in the IFM and should be followed by all officers with authority to permit withdrawals. As an example, in cases where

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a lack of proper documents is the result of inadvertent error, misinformation, or where no fraud was intended (e.g. an expired nonimmigrant visa), Service officers may consider, on a case-by-case basis and at the discretion of the Service, any appropriate waivers, withdrawal of application for admission, or deferred inspection to resolve the ground of inadmissibility rather than issuing an expedited removal order.

All officers should be aware of precedent decisions and policies relating to the relevant grounds of inadmissibility. Section 212(a)(6)(C) is an especially difficult charge to sustain, unless the case involves obviously fraudulent or counterfeit documents. Misrepresentation is even more difficult to determine. Also keep in mind that an alien who is determined to be inadmissible for fraud or misrepresentation is barred forever from the United States, with few waivers available. Any one or several of the following points should be considered in determining if an alien has committed fraud or misrepresentation.

- To support a charge of having procured a document by fraud or misrepresentation, the procuring must have been done from a government official, not from a counterfeiter, and any misrepresentation must have been practiced on a U.S. Government official.
- The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.
- The fraud or misrepresentation must be material, i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility.
- In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity.
- Silence or failure to volunteer information does not in itself constitute a misrepresentation.
- Aliens who are determined to be mentally incompetent and small children judged to be incapable of independently forming an intent to defraud should not be ordered removed using section 212(a)(6)(C) as the inadmissibility charge. The preferred charge in such cases would be section 212(a)(7).

All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be delegated below the level of a second line supervisor. Each district may determine at what level (second line supervisor or above) this review authority should be delegated. The expedited removal provisions are not applicable in preclearance or preinspection operations. If the Service wishes to proceed with expedited removal of an alien inspected during an en route inspection of a vessel, action on the case will be deferred until the vessel has arrived in the United States. The alien may then be processed as an expedited removal case.

Port directors are responsible for ensuring that all U.S. Customs officers who are cross-designated to perform immigration inspections are adequately trained in the expedited removal provisions. Customs officers shall not issue expedited orders of removal, even in ports where there is only a Customs officer on duty. Such cases must be referred to an INS officer if a decision is made to pursue expedited removal.

See Appendix 17-3 for a flow chart mapping the entire expedited removal process.

(Paragraph (a) amended 8/21/97; IN97-05)

(b) Preparing a Case. The steps to be taken when ordering an alien removed under the expedited removal provisions differ somewhat from those in normal removal proceedings. As when referring an alien for a removal hearing before an immigration judge, it is important that a complete, accurate record of removal be created, and that any expedited removal be justifiable and non-arbitrary. Numerous Service forms have been revised or newly created to conform with IIRIRA. The revised forms are listed in [8 CFR 299.1](#) and [299.5](#) of the interim regulations.

A separate IIRIRA wire details the list of forms and how to obtain them. Districts may request these forms from the

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Service Forms Centers. In addition, the forms are being incorporated in electronic format into numerous automated forms-generation systems.

The following steps must be taken in each case in which an order of expedited removal is contemplated or entered against an alien:

(1) Clearly explain to the alien, in a language he or she understands, the serious nature and impact of the expedited removal process. Read the statement of rights and consequences contained on the first page of Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, to the alien. Explain that you will be taking a statement from him or her, and that any information given or discovered will be used in making a decision on the case and may result in his or her prompt removal. Advise the alien that if he or she is found to be inadmissible and a decision is made to order the alien removed, he or she will be immediately removed from the United States. Explain that there is no appeal to this decision and that this will be his or her only opportunity to provide any information or state any fear of return or removal that he or she may have.

(2) In every expedited removal case, you must use Form I-867A&B to take a complete sworn statement from the alien concerning all pertinent facts. The information discussed in paragraph (1) above is printed on the form and should be carefully explained to the alien. If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other Service forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply.

The sworn statement will usually be done in question and answer format, but a narrative format may be used in simple, straightforward cases not involving potentially sensitive or contentious issues. The sworn statement should cover several general areas of inquiry:

Identity--including true name, aliases, date and place of birth and other biographical data.

Alienage--determine citizenship, nationality, residence. Cover any possible claim to U.S. citizenship through parents.

Inadmissibility--questions should cover the alien's reason for coming to the United States, information about the specific facts of the case and the specific suspected grounds of inadmissibility.

Fear of persecution or torture--if the alien indicates in any fashion that he or she has a fear of persecution, or that he or she has suffered or might suffer torture, you are required to refer the alien to an asylum officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution is referred to an asylum officer for a credible fear determination. Inspectors should consider verbal as well as non-verbal cues given by the alien. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear. In some cases, this area of discussion might arise during the main body of the sworn statement (i.e., before you reach the jurat page, Form I-867B) and you may have already asked these specific questions. If the exact questions have already been asked and answered, you may elect to line out the identical questions on the jurat page. Otherwise, ask the questions as they appear on the I-867B at the end of the sworn statement. If the alien indicates an intention to apply for asylum or a fear of harm or concern about returning home, the inspector should ask enough follow-up questions to ascertain the general nature of the fear or concern. Do not go into detail on the nature of the alien's fear of persecution or torture; leave that for the asylum officer. If an alien asserts a fear or concern which is clearly unrelated to an intention to seek asylum or a fear of persecution, then the case should not be referred to an asylum officer. In determining whether to refer the alien, inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The inspector should err on the side of caution and apply the criteria generously, referring to the asylum officer any questionable cases, including cases which might raise a question about whether the alien faces persecution. Do not make any evaluation as to the merits of such fear; that is the responsibility of the asylum officer. Immigration officers processing aliens for expedited removal may contact the asylum office point(s) of contact when necessary to obtain guidance on questionable cases involving an expression of fear or a potential

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asylum claim.

Impact of decision--once you have gathered all the facts, you will decide, usually in consultation with a supervisor, the best course of action. Depending on the circumstances, you may admit the alien, allow the alien to apply for any applicable waivers, defer the inspection or otherwise parole the alien, permit the alien to withdraw his or her application for admission, issue an expedited removal order, or refer the alien for a credible fear determination. Whatever decision is made, clearly advise the alien of the impact and consequences of the determination and record this in the statement.

You must use Form I-867B as the final page of the sworn statement and jurat. Be sure to obtain responses from the alien regarding the closing questions contained on the form. If the alien in any way indicates a fear of removal or return, follow the procedures in paragraph (d) of this section. Collect any additional evidence relevant to the case which is discovered during the inspection process. Provide a copy of the completed statement, upon signature, to the alien. Retain a copy for the Service file and copy for the port file.

(3) Prepare three copies of Form I-860, Notice and Order of Expedited Removal. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. 212(a)(6)(C)(i)), and insert a narrative description of each charge. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters should not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded either in the sworn statement or as an addendum to the statement.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second line supervisor) or person acting in that capacity, for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The expedited removal order must be signed legibly by the preparing officer.

(4) Obtain the photograph and fingerprints of the alien on FD-249 fingerprint cards (three sets--see chapter 18.9(c) for distribution). Be sure to complete the entire form and to properly code the fingerprint cards with the proper United States Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- [18 U.S.C. 1544](#) Photo substitutions
- [18 U.S.C. 1546](#) Counterfeit immigrant visa
- [8 U.S.C. 1306](#) Counterfeit INS documents, such as alien registration
- [18 U.S.C. 911](#) False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)
- [18 U.S.C. 1001](#) Other (fraudulent documents, false statements, imposter, etc.)

(5) Obtain forensic analysis, if appropriate. In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required. Due to the expedited nature of the proceedings, actual forensic examination of the document by the Forensic Document Laboratory (FDL) may not be feasible. This does not mean that it is permissible to "rush to judgement", or that it is permissible to expeditiously remove an alien based on incomplete evidence. If forensic analysis is required to establish that the alien is inadmissible, such analysis must be obtained before the Form I-860 is executed. If necessary, the alien should be detained until the analysis is performed, and then the I-860 can be executed. (On the other hand, if the alien's

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inadmissibility under section 212(a)(7) has been established, there is little or no reason to delay the expedited removal process in order to also establish the 212(a)(6)(C) charge.) Offices with photophones or other communications devices for transmitting quality images should use that technology whenever possible or necessary. [See Chapter 32 for details on using FDL services and for contributing documents or intelligence information concerning the fraud.]

(6) Unless an "A" number already exists for an alien placed into expedited removal, an "A" number must be assigned to every expedited removal case at the port-of-entry in order to ensure proper tracking of the case from the onset.

New codes have been created for entry of expedited removal cases into the Central Index System (CIS). Those new codes are:

ERF--Expedited Removal case has been initiated under section 235(b)(1) INA and a final decision is pending a credible Fear determination by an asylum officer or immigration judge.

ERP--Expedited Removal case has been initiated under section 235(b)(1) INA and a final decision is Pending for reasons other than referral for credible fear interview before an asylum officer.

ERR--Expedited Removal case has been initiated and alien has been Removed from the United States under that program

Entry of cases into CIS should be accomplished as quickly as possible in accordance with district policy. To ensure prompt data entry, "A" files for expedited removal cases should be separated from other files and flagged as expedited removal cases.

New codes are also being created to designate expedited removal cases in the National Automated Immigration Lookout System (NAIS) and the Interagency Border Inspection System (IBIS). The new IBIS disposition codes have recently been posted in the IBIS Daily News. Field offices will be notified as new codes are finalized.

Search for existing Service records in CIS and other appropriate automated systems. If an "A" file exists, create a temporary file and request the permanent file. After the file is received, update it with all relevant documents completed or collected during the expedited removal process, and forward it to the proper files control office. If no previous file exists, create a new "A" file relating to the alien.

(7) Consult [8 CFR 236.1\(e\)](#) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official. This normally will only be necessary when removal of the alien cannot be accomplished immediately and the alien must be placed in detention for longer than 24 hours. When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.

(8) If criminal prosecution of the alien is contemplated in addition to expedited removal, the criminal action must be completed before the alien is ordered removed. [See Chapter 18 for procedures for criminal prosecution]. Once the warning of rights has been given to the alien, questioning of the alien can only occur with the alien's consent. If the alien permits questioning and processing to proceed, complete the sworn statement and the Form I-860. Do not serve the I-860 on the alien, but place it in the "A" file pending the criminal processing. If the alien is to be turned over to another law enforcement agency, serve a Form I-247, Immigration Detainer--Notice of Action, on the other agency. Once the alien is returned to INS custody, the I-860 may be served and the alien removed under the expedited removal order.

(9) Serve the original Form I-860 on the alien, unless the alien is to be deferred to an onward office, in which case the service is accomplished by the onward office. Place a copy of the I-860 in the "A" file. The third copy may be retained at the port.

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(10) Serve Form I-296, Notice to Alien Ordered Removed. You must check the appropriate box to indicate the period during which the alien must obtain permission to reenter: 5 years for the first removal under section 235(b)(1); 20 years in the case of a second or subsequent removal; at any time if the alien has been convicted of an aggravated felony (even though the alien is not being charged as an aggravated felon in this proceeding). At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on a copy of the I-296, the alien should sign the form, and the particulars of the departure entered on the form for retention in the file.

(11) Cancel the alien's visa or border crossing card, if appropriate, and complete and distribute Form I-275 as described in Chapter 17.2. Note the passport with the file number and action taken, for example: "Ordered Removed 12/1/97 NYC/Section 212(a)(6)(C)(i)". Forward a copy of the expedited removal order with the I-275 to the Department of State.

(12) Prepare a new Form I-94. If the alien applied for admission at a land border, annotate the Form I-94 to read: "Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)". If the alien applied for admission at an airport or seaport, use the parole stamp and endorse the I-94 to read: "For removal from the U.S. by (carrier name). Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)".

(13) Detain the alien, as appropriate. Follow local procedures to obtain detention authorization and arrange for detention. Aliens placed into expedited removal proceedings must be detained until removed from the United States. Parole may be permitted only if there is a medical emergency or if it is necessary for legitimate law enforcement purposes, such as for criminal prosecution or to testify in court. Once an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria.

If there is insufficient detention space to detain an alien in expedited removal who is arriving at a land port-of-entry and who claims a fear of persecution, that alien may be required to wait in Canada or Mexico pending a final determination of his or her claim. This option should be taken only as a last resort and should only be used for aliens who claim a fear of persecution that is unrelated to Canada or Mexico. Aliens who make false claims to U.S. citizenship, or false or unverified claims to lawful permanent resident, asylee, or refugee status, and aliens who claim a fear of persecution that is related to Canada or Mexico must be detained. Aliens arriving at a land border port-of-entry who do not claim lawful status in the United States or a fear of persecution should normally be processed immediately and either returned to Canada or Mexico or detained until removed. These aliens should not be required to wait in Canada or Mexico pending issuance of an expedited removal order.

Credible fear interviews will normally take place at Service or contract detention facilities. Each port-of-entry and detention facility will be provided with a point or points of contact at the asylum office having responsibility for that geographical area. It is the responsibility of the referring (Inspections) officer to provide the alien being referred for a credible fear interview with both a Form M-444, Information about Credible Fear Interview, and a list of free legal services, as provided in 8 CFR parts 3 and 292. It is the responsibility of the detention or deportation officer to notify the appropriate Asylum office point of contact when an alien subject to the expedited removal process requires a credible fear interview, and is being detained in Service custody pending this interview. That officer should also provide any additional information or requirements of the alien, such as whether the alien requires an interpreter or other special requests or considerations. When aliens are detained in non-Service facilities or at remote locations, the referring officer must notify the appropriate Asylum Office. If the alien is subsequently transferred to another detention site, the detention or deportation officer must ensure that the appropriate Asylum Office has been notified.

Normally the credible fear interview will not take place sooner than 48 hours after the alien arrives at the detention facility. If the alien requests that the interview be conducted sooner, the referring officer, or any other officer to whom the alien makes the request, should immediately convey that information to the appropriate Asylum office.

(14) Remove the alien from the United States. Most aliens removed under the expedited removal provisions will be turned over to the carrier of arrival for prompt removal; however, some aliens, such as those who claim asylum or LPR status, may be detained pending a decision on their claim. At the land border, ensure the alien's departure to the

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contiguous foreign territory. At air and seaports, serve the carrier with Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to order the carrier to remove the alien when the removal process is finished, or if the case has not yet been completed, to advise the carrier of potential liability.

(15) Every case in which an expedited removal order is issued must be entered into the Deportable Alien Control System (DACS). Entry of data for those aliens detained by the Service will be handled by the Detention and Deportation section responsible for the detention facility. Entry of data for aliens not requiring detention who are removed directly from the port-of-entry is the responsibility of the Inspections section. A separate memorandum issued by the Office of Field Operations on March 18 details the procedures for entry of data into DACS for expedited removal cases. Cases initiated at the ports-of-entry and referred for removal proceedings under section 240 will continue to be entered into DACS by Detention and Deportation.

The expedited removal process will be the subject of extensive inquiry and will require appropriate tracking of specific case data. A separate memorandum regarding tracking of expedited removal cases at ports-of-entry explains how this data collection will be accomplished.

(16) The Inspections Workload Report, Form G-22.1 is being revised to include data relating to expedited removal cases, and is expected to be available October 1, 1997.

(c) Withdrawal of Application for Admission in Lieu of Expedited Removal Order. The Service has the discretion to allow an inadmissible alien to withdraw his or her application for admission and depart the United States. See Chapter 17.2 for a full discussion of withdrawal considerations. This discretion also applies to aliens subject to expedited removal, and should be applied carefully and consistently, since your decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal). Follow the guidelines and considerations contained in Chapter 17.2 in determining whether granting withdrawal of application for admission is in the best interest of justice.

(d) Fear of Persecution or Request for Asylum. Aliens who indicate an intention to apply for asylum or a fear of persecution may not be ordered removed until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution and warrants a full asylum hearing before an immigration judge.

When questioning or taking a sworn statement from any alien subject to the expedited removal provisions, you need not directly solicit an asylum claim. However, to ensure that an alien who may have a genuine fear of return to his or her country is not summarily ordered removed without the opportunity to express his or her concerns, you should determine, in each case, if the alien has any concern about being returned to his or her country. Further, you should fully explore any statement or indications, verbal or non-verbal, that the alien actually may have a fear of persecution or return to his or her country. You must fully advise the alien of the process, as indicated on the Form I-867A, and of the opportunity to express any fears.

Keep in mind that the alien need not use the specific terms "asylum" or "persecution" to qualify for referral to an asylum officer, nor does the fear of return have to relate specifically to one of the five grounds contained within the definition of refugee. The United States is bound by both the Protocol on Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, except under extraordinary circumstances, may not return an alien to a country where he or she may face torture or persecution.

The alien may convey fear of violence or harm, a need for protection, an indication of harm to, or disappearance of, relatives or associates, or dangerous conditions in his or her country. Even disputes of a personal nature sometimes may relate to asylum, such as domestic violence, sexual or child abuse, child custody problems, coercive marriage or family planning practices, or forced female genital mutilation. All officers should recognize that sometimes unusual cases have been found eligible for asylum that may not have initially appeared to relate to the five grounds contained in the definition of refugee, such as AIDS victims who face government persecution, land or money disputes with wealthy persons or persons in power, whistle blowers, witnesses to crimes and even organized crime connections. Do not make judgement decisions concerning any fear of persecution, torture, or return. If in doubt, refer to an asylum officer for a determination. Any alien who by any means indicates a fear of persecution or return may not be

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removed from the United States until the alien has been interviewed by an asylum officer.

If the alien indicates an intention to apply for asylum or asserts a fear of persecution or return, and is being referred for a credible fear interview with an asylum officer:

(1) Create an "A" file, if one does not already exist.

(2) Fully process the alien as an expedited removal case, if that is not already being done. Establishing inadmissibility cannot be left to the asylum officer. Record a description of the particulars of the interview and the alien's initial claim to asylum or fear of return by means of a sworn statement. Form I-867A and B must be used for all expedited removal cases. Follow the instructions in paragraph (b)(1) above to ensure that the alien understands the proceedings. Although you need not pursue the asylum claim in detail, enough information should be obtained to inform the asylum officer of the alien's initial claim to asylum or fear of persecution or return. If the alien answers the closing questions on Form I-867B in the affirmative, several other questions may be necessary to determine the nature of the fear or concern.

If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other Service forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply and then use Form I-867B for the closing questions and jurat. The sworn statement will usually be done in question and answer format, but a narrative format may be used in simple, straightforward cases not involving potentially sensitive or contentious issues.

(3) Complete the Determination of Inadmissibility portion of the Form I-860, including sufficient information to support the charges of inadmissibility should the asylum officer find that alien does not have a credible fear of persecution. Sign only the Determination portion of the form. The removal part of the order will be signed by the asylum officer only after it is determined that the alien does not have a credible fear of persecution. Refer also to Chapter 43.3 for documenting any potential fines issues.

(4) Advise the alien of the purpose of the referral and that the alien may consult with a person or persons of his or her choosing, at no expense to the government and without delaying the process, prior to the interview. The Form M-444, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien.

(5) Arrange for detention of the alien according to local procedures. According to local procedures, you must advise the appropriate asylum office that an alien being detained requires a credible fear interview. The asylum office should also be advised whether the alien requires an interpreter and of any other special considerations. Forward the "A" file to the location where the credible fear interview will take place. Prepare Form I-259 and serve it on the affected carrier. Complete Form I-94 for NIIS entry notated "Detained at \_\_\_\_\_ pending credible fear interview pursuant to section 235(b)(1)(B) of the Act. (Date), (Place), (Officer)".

An asylum officer will conduct an interview to determine if the alien has a credible fear of persecution, either at the detention facility or at a location arranged through the asylum office having jurisdiction over the place of apprehension, depending on location. In some cases, credible fear interviews may be conducted by other asylum-trained immigration officers. If the alien is determined to have a credible fear of persecution, the asylum officer will refer the alien for a well-founded fear hearing before an immigration judge under section 240 of the Act. If the alien is found not to have a credible fear of persecution, following review by a supervisory asylum officer, the asylum officer will order the alien removed pursuant to section 235(b)(1), unless the alien requests that the determination of no credible fear be reviewed by an immigration judge. If the alien makes such a request, the asylum officer will use Form I-863, Notice of Referral to Immigration Judge, checking box #1, to refer the alien to the immigration judge for review of the credible fear determination. If the immigration judge determines that the alien does not have a credible fear of persecution, the Service will present the alien for removal to the carrier on which he or she arrived. There may be some situations where the actual carrier of arrival and port of embarkation cannot be ascertained. Such cases may require additional processing, including detention, in order to arrange for travel documents and

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transportation at government expense (User Fee).

(e) Claim to lawful permanent resident, asylee, or refugee status, or U.S. citizenship. (1) General. Cases in which an alien who is subject to expedited removal claims to be a U.S. citizen, claims to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208, should be handled very cautiously to ensure that the rights of the individual are fully protected. The expedited removal authority provided by IIRIRA is a powerful tool and there are significant interests at issue where such a claim is made. You should be extremely aware of those interests when you are using this tool. There are grave consequences (for the person involved, for the Service, and for the individual officer) involved in incorrectly processing a bona fide citizen, LPR, refugee or asylee for removal. Although the statute and regulations provide certain procedural protections to minimize the risk of such consequences, you should never process a case for expedited removal which you would not feel satisfied processing for a hearing before an immigration judge.

If the alien falsely (or apparently falsely) claims to be a U.S. citizen, lawful permanent resident, refugee, or asylee, and is not in possession of documents to prove the claim, make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of the Service data systems, manual request to the Records Division, careful questioning of the alien, or review of Service issued and other documentation presented. Use whatever means at your disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc.

(2) Verifiable Claim. When inspecting an alien whose claim to lawful permanent resident status has been verified, determine whether the alien is considered to be making an application for admission within the meaning of section 101(a)(13). [See discussion in Chapter 13.4.] Although the lawful permanent resident may not be considered to be seeking admission, he or she is nonetheless required to present proper documents to establish his or her status as a lawful permanent resident. If the claim is verified and the alien appears to be admissible except for lack of the required documents, consider a waiver under section 211(b) for a lawful permanent resident, or consider accepting an application for a refugee travel document in accordance with [8 CFR 223.2\(d\)\(2\)\(ii\)](#) for a refugee or asylee. Refer to Chapters 13.2 and **17.5** for a discussion of this and other options for admitting returning residents.

If the claim is verified, but a waiver is not available or is not clearly warranted, such as when fraud was committed in obtaining status or upon entry, or in cases where the alien appears to have abandoned his or her residence, you may initiate removal proceedings under section 240 of the Act. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. Although the charging document, Form I-862, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a port-of-entry are authorized to issue a Notice to Appear only to arriving aliens, as defined in [8 CFR 1.1\(q\)](#). If a lawful permanent resident is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in [8 CFR 239.1](#), such as the ADDE or ADDI, in accordance with local policy.

(3) No Verifiable Claim. If no record of the alien's lawful admission for permanent residence, grant of refugee status, admission as an asylee, or citizenship can be found after a reasonably diligent search, advise the alien that you are placing him or her under oath, or take a declaration as permitted in [28 U.S.C. 1746](#), and warn the alien of the penalties for perjury. [Section 1746 of the Title 28 United States Code](#) reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

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(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

The penalties for perjury contained in [18 U.S.C. 1621](#) (Perjury generally) provide for fine and imprisonment of not more than five years, or both. The penalties for perjury contained in [18 U.S.C. 1546](#) (Fraud and misuse of visas, permits, and other documents) provide for fine and imprisonment of not more than 10 years, or both.

If the alien declares under oath, pursuant to the advice above, that he or she is a citizen, lawful permanent resident, refugee, or asylee, order the alien removed under section 235(b)(1)(A) and refer to the immigration judge for review of the order. Complete Form I-860 after completing all procedures in this chapter. Serve the Form I-860 on the alien. Serve Form I-259 on the affected carrier, if appropriate. Use Form I-863, checking Box #4, to refer the removal order to the immigration judge for review. The alien should be detained pending review of the order by the immigration judge. In the event an alien who has made a verbal claim to citizenship or to LPR, refugee, or asylee status declines to make a sworn statement, conclude the expedited removal process in the same manner as any other nonimmigrant in the same situation.

If the immigration judge determines that the individual is not a citizen or is an alien who has never been admitted as a lawful permanent resident, refugee, or asylee, the expedited removal order will be affirmed and the alien removed. There is no appeal from the decision of the immigration judge. If the judge determines that the individual is a citizen, the process is completed and the citizen is released. If the judge determines that the alien was once admitted as a lawful permanent resident, refugee, or asylee, and that status has not been terminated, the judge will vacate the expedited removal order and the Service may initiate removal proceedings under section 240.

(f) Special Treatment of Minors.

(1) General Policy. When an unaccompanied minor (a person under the age of eighteen) appears to be inadmissible under section 212(a)(6)(C) or (7) of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of an application for admission.

(2) Withdrawal of Application for Admission by Minors. Whenever appropriate, the INS should permit unaccompanied minors to withdraw their application for admission rather than placing them in formal removal proceedings. In deciding whether to permit an unaccompanied minor to withdraw his or her application for admission, every precaution should be taken to ensure the minor's safety and well-being. Factors to be considered include the seriousness of the offense in seeking admission, previous findings of inadmissibility against the minor, and any intent by the minor to knowingly violate the law.

Before permitting a minor to withdraw his or her application for admission, the INS officer must be satisfied either that the minor is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or in cases where a relative or guardian is not available, a consular officer) is aware of the actions taken and the minor's impending return. Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the minor's inadmissibility whenever possible. A minor brought to the United States by a smuggler is to be considered an unaccompanied minor, unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the minor's case.

The true nationality of the minor must be ascertained before permitting the minor to withdraw. Another factor to consider is whether the port of embarkation to which the minor will be returned is the country of citizenship of the minor. A minor may not be returned to or be required to transit through a country which may not be willing or obligated to accept him or her. If the minor is being returned to a third country through a transit point, officers must ensure that an immediate and continuous transit will be permitted.

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When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section 240 of the Act. If there is no possibility of a fear of persecution or return and the INS permits the minor to withdraw his or her application for admission, the consular or diplomatic officials of the country to which the minor is being returned must be notified. Safe passage can then be arranged, and after all notifications to family members and government officials have been made, the minor may be permitted to withdraw.

(3) Minors Referred for Section 240 Proceedings. Except as noted below, if a decision is made to pursue formal removal charges against the unaccompanied minor, the minor will normally be placed in removal proceedings under section 240 of the Act rather than expedited removal. The unaccompanied minor will be charged under both section 212(a)(7)(A)(i)(I) of the Act as an alien not in possession of proper entry documents and section 212(a)(4) of the Act as an alien likely to become a public charge. This additional charge renders the minor subject to removal proceedings under section 240 of the Act. Other charges may also be lodged, as appropriate. As a general rule, minors should not be charged with section 212(a)(6)(C) of the Act, unless circumstances indicate that the alien clearly understood that he or she was committing fraud or that the minor is knowingly involved in criminal activity relating to fraud.

Minors who are placed in section 240 proceedings and who are not in expedited removal may either be released in accordance with the parole provisions, or placed in a Service-approved juvenile facility, shelter, or foster care in accordance with existing juvenile detention policies and the Flores v. Reno settlement. At all stages of the inspection and removal process, officers should take every precaution to ensure that the minor's rights are protected and that he or she is treated with respect and concern. [See Appendix 17-4, policy memorandum discussing the Flores settlement.]

(4) Expedited Removal of Minors. Under limited circumstances, an unaccompanied minor may be placed in expedited removal proceedings. The minor may be removed under the expedited removal provisions only if the minor:

- has, in the presence of an INS officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult;
- has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the inspecting officer has confirmation of that order; or
- has previously been formally removed, excluded, or deported from the United States.

If an unaccompanied minor is placed in expedited removal proceedings, the removal order must be reviewed and approved by the district director or deputy district director, or person officially acting in that capacity, before the minor is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

(5) Treatment of Minors during Processing. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. As with all persons being detained at ports-of-entry, officers must provide the minor access to toilets and sinks, drinking water and food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile will attempt to escape. Unaccompanied minors should not be held with unrelated adults. Any detention following processing at the port-of-entry must be in accordance with the Flores v. Reno settlement.

(6) Minors Accompanied by Relatives or Guardians. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the minor should be placed in the same type of proceeding (i.e. expedited removal or 240 proceedings) as the adult. However, withdrawal of application for admission by the minor should be considered whenever appropriate, even though the relative or guardian may remain subject to formal removal proceedings.

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(Paragraph (f) added 8/21/97; IN97-05)

(g) United Nations High Commissioner for Refugees (UNHCR) Monitoring Guidelines.

(1) Background. The United States has signed various international agreements accepting an obligation to protect refugees and asylum-seekers from return to persecution, and to follow certain international standards in processing asylum-seekers. The organization that monitors compliance with these agreements and provides guidance on their implementation is the United Nations High Commissioner for Refugees (UNHCR). As such, the United States has a responsibility to cooperate with UNHCR's requests for access to processes involving asylum-seekers. Therefore, the Immigration and Naturalization Service (INS) believes it is appropriate for the UNHCR to observe, to the extent possible within the resources available to the UNHCR, the expedited removal process in secondary. The Congressional General Accounting Office and the UNHCR have been given full access, and can be relied on to make a fair and impartial assessment of the process.

For these reasons, full cooperation with visiting UNHCR delegations is essential. Below are general guidelines and procedures to follow regarding a visit from the UNHCR. While the guidelines concentrate on the limits of the UNHCR's access and potential problem areas, in our experience the UNHCR has approached site visits professionally and responsibly, providing us with positive comments and useful feedback, and problems are unlikely to arise during its site visits.

(2) UNHCR Requests. The UNHCR has agreed to make all requests to observe the expedited removal process, whether at ports-of-entry, detention facilities or at the credible fear interview stage, in writing to the Office of Field Operations. If any field office receives a request for access to the expedited removal process from a representative of the UNHCR, the field office should advise the representative to make the request to the Office of Field Operations.

Written requests from UNHCR to conduct a site visit must be received a minimum of two weeks in advance. The INS will consider written requests submitted less than two weeks in advance for only exceptional circumstances. The request will include the purpose and site(s) of the visit, the duration of the visit, the full names of the UNHCR staff on the delegation, the title and official responsibilities of everyone in the delegation, which person on the delegation is leading the team, and whether they will have any special needs or requests. The Office of Field Operations will evaluate the request in consultation with the field and make a decision as quickly as possible.

Should there be a need to clarify or confirm the identities of visiting team members, local INS staff will call the Office of Field Operations.

(3) Scope of UNHCR's Access to Secondary Inspection Processing. The UNHCR has agreed to maintain the confidentiality of any information to which it has access such as training materials and procedures manuals. Therefore, it can be given full access to tour the primary and secondary inspection areas, holding cells, food storage facilities, and other areas related to processing of expedited removal cases. While representatives are at the port, an INS officer should be present except if the INS has arranged for the representatives to talk confidentially to an alien. Due to safety issues, the representatives will not be allowed to participate or be used as witnesses when searching baggage and personal effects or in body pat-downs and searches. Viewing of the baggage search may be allowed unless the officer determines there to be a safety concern or threat to the UNHCR representatives. The UNHCR should not be given access to computer databases or programs due to the sensitive law enforcement nature of the information, but may be given a demonstration of certain programs in relation to the expedited removal process. The representatives may ask questions about the process, so long as their movements and the timing of their questions do not impede the processing of cases.

The port will designate a supervisor on the shift to whom the UNHCR team may direct questions about the processing. As time permits, the supervisor may arrange or representatives to talk directly to line officers. During a secondary inspection, when possible, the representatives should be allowed to view the secondary inspection from an area (seated or standing) that would enable them to hear and see all participants.

The port will designate one or more secondary and primary officers on the shift to whom the UNHCR

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representatives may direct questions. Designation of these officers should be initially on a voluntary basis.

(4) Interactions Between UNHCR and Aliens in Secondary Inspection. If UNHCR representatives ask to sit in on interviews, either of specific aliens or a random sample of aliens in secondary, the INS officer should explain to the alien that the UNHCR representatives do not work for the United States government, but work for the United Nations High Commissioner for Refugees, and have asked to observe some interviews to understand the American process. No more than two representatives can be present during the interview, and business cards will be provided to the alien after the interview is completed. The INS officer should explain that it is the alien's decision whether the UNHCR representatives are allowed to observe the interview or not, and that the INS will ask the same questions and follow the same procedures either way. If the alien does not want the UNHCR representatives to sit in on the interview, his or her wish should be respected. If the applicant requests to talk briefly and confidentially with the UNHCR representatives, he or she may do so after the officer finishes the secondary interview and process.

If the alien indicates that he or she does not want the representative present, and UNHCR appears to be questioning that decision, a supervisor should be notified immediately, and should support the alien's decision to be interviewed without a UNHCR observer with no further discussion. The INS supervisor will provide an explanation to the UNHCR delegation lead official that the interview will not continue with their participation. Additionally, the INS supervisor reserves the right to terminate the entire site visit, any part of an interview, or a particular portion of the site visit. A reason must be provided to the lead UNHCR official at the time of the termination. Prior to a decision to terminate the entire site visit, the INS supervisor must immediately advise the Headquarters Field Operations point-of-contact through appropriate channels. The alien's agreement or refusal to have a UNHCR presence at the interview should not be factored into the INS officer's decision to refer a case for a credible fear interview.

If an alien agrees to be interviewed with the UNHCR representatives present, the UNHCR representatives may observe the interview, and will be given a few minutes at the end of the interview to communicate directly with the applicant. In general, the UNHCR representatives should not ask questions or make comments during the interview. The INS officer may, however, at his or her discretion, allow the representatives to make a comment or ask a question if the INS officer believes that it is facilitating the progress of the interview.

The INS is not responsible for interpreting the interview verbatim or locating an interpreter to provide a verbatim interpretation in such circumstances. If the INS officer and the alien are communicating in a language other than English without the assistance of an interpreter, and the representatives do not understand the language, the INS officer should explain what is being stated or asked.

When the interview is concluded, the UNHCR representatives should be invited to communicate briefly with the applicant. Any questions or statements asked by the representatives or the applicant, and any responses, will be recorded in the sworn statement. Additionally, any interruptions of the statement will be recorded on the sworn statement.

If the UNHCR team or the alien request a brief private discussion, the request should be accommodated within the constraints of the facility. Normally the issues aliens bring up with the UNHCR are the same that they bring up during secondary, for example: when can they call a relative, how long does the process take, and so forth. This request should be noted on the sworn statement. Generally, the meeting should take place out of hearing, but not out of sight, of the INS staff. If the UNHCR team requires translation and is not able to locate its own telephonic interpreter quickly, then it should be provided when feasible. The local asylum office will have been notified that the UNHCR is conducting a site visit and can cover the cost of interpretation using a commercial interpreter service if necessary. However, if an interpreter cannot be located quickly and there are time constraints (such as finishing in time to put an applicant on a scheduled plane), the INS officer should consult with his or her supervisor to decide if there are compelling reasons for delaying the process to provide the representatives time to obtain an interpreter.

If the UNHCR team reports back to the INS officer, after a private conference, that the alien alleged abusive treatment, either by the INS, an airline employee, or a smuggler, a supervisor should be notified immediately and the alien should be asked further questions in the representatives' presence. If the UNHCR team indicates that the alien has expressed a fear during the private conference which was not expressed during the interview with the INS officer, the INS officer should ask the alien, in the representatives' presence, if the alien is afraid or concerned about

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return, or would like to discuss his or her situation privately with an asylum officer. The alien's answer to the above questions should be recorded on the sworn statement or in a memo to file.

If the alien either appears unwilling to discuss the alleged claim of fear with the INS officer, or states that the UNHCR representatives misunderstood, or that he or she does not want to be detained for a credible fear interview, the INS officer should call the local asylum office for guidance on whether to refer the alien for a credible fear interview. If the local supervisory asylum officer is not immediately available, the INS officer may call the INS Command Center and ask it to page another supervisory asylum officer or listed headquarters asylum staff.

(5) Follow-up. If serious problems or misunderstandings arise during the UNHCR site visit, an INS supervisor should immediately contact the Headquarters Field Operations representative who set up the meeting. After the UNHCR visit is completed, the district will provide the Office of Field Operations feedback on how the visit went and alert it to any issues which the UNHCR representative(s) might raise.

(Added IN 00-22.)

## References:

INA: Sections 212, 235, 240, 241.

Regulations: 8 CFR 212, 235, 240, 241.

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