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Immigration and Naturalization Service

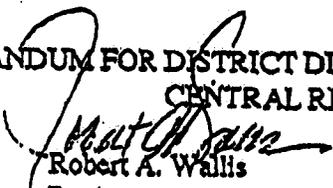
CROINS 7028

Central Region
7701 North Stemmons Freeway
Dallas, TX 75247

November 27, 2002

MEMORANDUM FOR DISTRICT DIRECTORS
CENTRAL REGION

FROM:


Robert A. Wallis
Regional Director

SUBJECT: Special Registration of Certain Nonimmigrant Aliens Already Admitted to the
United States

The attached Headquarters, Office of Field Operations (HQOPS) memorandum establishes the procedures for the implementation of call-in registration ordered by the Attorney General. The memorandum includes the penalties for failure to register, and actions to be taken by Service officers when encountering a nonimmigrant in the field who has failed to register. The call-in registration procedures are almost identical to the NSBERS registration implemented at the ports of entry. All elements of the Inspections program are ready to aid in training and implementation of this program.

Please disseminate this correspondence to ensure compliance with the attached policy guidance. Any questions relating to this memorandum or the memorandum referenced may be addressed to Assistant Regional Director Douglas L. Truesdale at (214) 905-5740.

Attachment

cc: Chief Patrol Agents
George Robertson, Acting Transition Field Coordinator

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DISTRIBUTED



U.S. Department of Justice
Immigration and Naturalization Service

HQINS 70/28

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20136

NOV 27 2002

MEMORANDUM FOR DISTRIBUTION LIST

FROM: Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Special Registration of Certain Nonimmigrant Aliens Already Admitted
to the United States

The purpose of this memorandum is to establish Immigration and Naturalization Service (INS) procedures for the implementation of any call-in registration ordered by the Attorney General. This memorandum has five parts: Current Federal Register Notice Criteria, Penalties, Registration Guidance, Enforcement Guidance, and Conclusion.

On September 11, 2002, the INS began implementation of the National Security Entry Exit Registration System (NSEERS) or Special Alien Registration Program. The purpose of Special Alien Registration, or NSEERS, is to ensure that certain aliens, whose presence in the United States requires closer monitoring in the national security and/or law enforcement interests of the United States, provide specific information at regular intervals to verify their compliance with their visa and admission, and to verify that they depart the United States at the end of their authorized stay. Prior to November 15, 2002, the only nonimmigrant aliens who had been subject to the NSEERS program were those who met the established criteria and applied for admission at ports of entry (POEs) on or after September 11, 2002.

Pursuant to Title 8, Code of Federal Regulations, Part 264.1(f)(4), the Attorney General may, via publication of a notice in the Federal Register, impose special registration requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted or who are otherwise in the United States. Exercise of this authority is more commonly referred to as a "call-in" registration.

Current Federal Register Notice Criteria

The Attorney General has determined that certain nonimmigrants who were present in the United States on or before September 10, 2002, and who meet the

established criteria, must be specially registered. A Federal Register Notice (FR Notice), published on November 6, 2002, specifies the criteria for this "call-in" registration.

Currently, an alien is required to register pursuant to the FR Notice if the alien is a male who was born on or before November 15, 1986; is a citizen or national of Iran, Iraq, Libya, Sudan, or Syria; was inspected by the INS and last admitted to the United States as a nonimmigrant on or before September 10, 2002; and will remain in the United States at least until December 16, 2002. Aliens who have nationality or citizenship in one of the above countries are required to register, notwithstanding any dual nationality or citizenship. Future Federal Register Notices may require call-in registration of citizens or nationals of additional countries.

The FR Notice is inapplicable to any alien who (1) is presently in an A or G nonimmigrant classification; (2) is lawfully admitted to the United States for permanent residence; or (3) has applied for asylum on or before November 6, 2002, or has been granted asylum, under section 208 of the Immigration and Nationality Act (Act).

An alien who is registered through the call-in process is subject to the same requirements as an alien registered upon arrival at a POE, except for the 30-40 day interview. See paragraph (e) of the FR Notice and 8 CFR 264.1(f)(5)-(9). These requirements include the annual interview for reregistration; departure registration; and notification of changes in address, educational institution or employer. For more information regarding these requirements, please refer to the September 5, 2002, memorandum from the Executive Associate Commissioner for Field Operations, titled "Standard Operating Procedures for Alien Registration" (September 5 Policy Memorandum).

When other nationalities are added to the call-in registration program, additional Federal Register notices will be published. The scope of future call-in registration requirements could change over time. Therefore, it is important to note that the language of future Federal Register notices will supersede the instructions in this memorandum if there is a conflict.

Penalties

An alien who willfully fails to appear for the call-in registration and/or comply with the applicable special registration requirements after appearing for the call-in is deportable under section 237(a)(1)(C)(i) of the Act for failure to maintain nonimmigrant status. In addition, an alien who fails to appear for the call-in registration prescribed by the FR Notice is deportable pursuant to section 237(a)(3)(A) of the Act, unless the alien

establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

An alien who registered pursuant to the call-in and later fails (without good cause) to comply with the departure registration requirement will be subject to a presumption of future inadmissibility to the United States under section 212(a)(3)(ii) of the Act, as an alien whom the Attorney General has reasonable grounds to believe, based on the alien's past failure to conform with special registration requirements, seeks to enter the United States to engage in unlawful activity.

An alien who willfully fails or refuses to make an application for registration or to be fingerprinted may be subject to criminal prosecution pursuant to section 266 (a) of the Act and shall, upon conviction thereof, be fined not to exceed \$1,000 or be imprisoned not more than six months, or both.

An alien who fails to provide the information requested in the FR Notice may be subject to criminal prosecution pursuant to section 266(b) of the Act and shall, upon conviction thereof, be fined not to exceed \$200 or be imprisoned not more than 30 days or both.

If evidence establishes that the failure to comply with the FR Notice by December 16, 2002, was reasonably excusable or not willful, the alien may be allowed to register late. If the evidence does not adequately support the alien's claim that the failure to apply for special registration by December 16, 2002, was reasonably excusable or not willful, the alien should be referred for initiation of removal proceedings.

Registration Guidance

An alien subject to call-in registration will report to a district or sub-office that currently provides the 30-40 day interview for NSEERS registrants. An interviewing officer will: (1) perform an Interagency Border Inspection System (IBIS) check, (2) register the alien using the ENFORCE/IDENT database to record information, and (3) perform a check of supporting documentation. An alien who is subject to call-in registration has already been admitted to the United States. Accordingly, questions concerning inadmissibility under section 212(a) of the Act need not be asked unless the officer is seeking to determine whether the alien was inadmissible at the time of entry. When information is encountered during the call-in registration process that could subject the alien to removal proceedings, the alien will be referred to the Investigations section for appropriate action.

INS officers will perform IBIS checks on all registrants prior to enrolling them in ENFORCE/IDENT. If a check results in an IBIS or an IDENT hit, the officer should continue to enroll the registrant in NSEERS. The officer should resolve the IBIS hit in accordance with the July 2, 2002, memorandum from the Executive Associate Commissioner for Field Operations, entitled: *Interagency Border Inspection System Records Check*. The resolution of all IBIS hits will be documented in the "comments" screen of NSEERS. If the IBIS information is of a law enforcement nature, the officer should refer the matter to the Investigations section for handling and resolution (see the section of this memorandum relating to Enforcement Guidance). Aliens who are IDENT hits should be referred to the Investigations section. District offices must be aware that officers enrolling registrants could encounter persons registered in the IDENT systems as LOOKOUT or ALERTS.

The call-in registration procedures, with minor changes, will be identical to the NSEERS registration process currently implemented at POEs. A number of immigration inspectors in every district office were given Train-the-Trainer instruction on enrolling registrants. Inspectors who have received this training in the use of ENFORCE/IDENT may be used to help train field personnel from other programs that may register aliens under the call-in procedure.

The officer will interview each registrant, under oath, to obtain the information needed to complete the registration data fields in the ENFORCE system. These data fields include simple, but detailed, biographic information relating to each registrant. All data elements in NSEERS should be considered required fields if the alien has that particular data. This is not to be confused with mandatory fields, where the system will not allow the process to proceed unless a data element is entered. One such example is flight number - if the alien arrived by plane, a flight number should be entered (if known); however, if the alien arrived on foot, the flight number is not required. The FR Notice requires call-in registrants to bring with them documentation relating to their stay in the United States (e.g., travel documents, including passport, Form I-94, and other forms of government-issued identification; and proof of where they are staying). Officers must review these documents for authenticity. Refer to the September 5, 2002, Policy Memorandum for step-by-step instructions on enrolling an applicant into the ENFORCE/IDENT database.

A new data field soon will be incorporated into the "Special Registration" screen to allow an officer to document why an alien is being enrolled. The selections will be: (1) Citizen/national of country published in Federal Register, (2) Attorney General Pre-existing Criteria, (3) By Officer's Discretion/Supervisor's Concurrence that Alien Meets Pre-existing Criteria, (4) IBIS Referral from DOS, (5) Call-in, and (6) Apprehension.

Upon completion of registration, the alien's Form I-94 Departure Record must be annotated with the fingerprint identification number (FIN) above the family name. The words "SPECIAL REGISTRANT - CALL-IN" will be annotated or stamped on the reverse side of the Form I-94 record.

The interviewing INS officers must provide informational handouts identical to those found on the INS website at <http://www.ins.gov/> to all call-in registrants so they will be informed of the requirements for annual re-registration; reporting changes of address, employment, or educational institution within 10 days; and departure registration. Interviewing officers are reminded that a call-in registrant does not have the same 30-40 day continuing registration requirement that a POE registrant has.

For those field offices that have not been equipped with the ENFORCE/IDENT equipment, please refer to part (a)(10) of the September 5 Policy Memorandum for information on back-up procedures.

Registrants appearing without a passport should be required to retrieve it (if practicable) and return to the INS office to complete the required registration. If a registrant claims to have lost Form I-94, the interviewing officer should do all checks practicable to determine if the registrant is in a lawful immigration status. These checks should include reviews of Non-Immigrant Information System (NIIS), IBIS (SQ-94), or any other systems that will inform the officer's determination. If the officer concludes that the registrant was last admitted to the United States as a nonimmigrant, the officer should enroll the nonimmigrant in NSEERS. If the officer determines that the alien is maintaining a valid nonimmigrant status, the officer should provide a replacement Form I-94 (application on Form I-102 and fee are required). An applicant for registration should be referred to the Investigations section if there is insufficient probative evidence to show that the alien was last admitted in and is currently maintaining a valid non-immigrant status.

An officer will have the discretion to refer any nonimmigrant to the Investigations section that the officer believes warrants referral. Referrals to the Investigations section should be made in accordance with current district policy. Possible reasons for referral include (but are not limited to): law enforcement IBIS hits, registrants being out of status, or registrants giving evasive or inconsistent answers.

An alien may have been admitted as a citizen of one country, but is also a citizen or national of another country that is subject to call-in registration. The call-in registration requirement is applicable for that person, notwithstanding any dual nationality or citizenship. For call-in registration, the responsibility is on the alien to identify himself as being subject to the call-in registration requirement. The alien may

possess a passport or other document that identifies him as a citizen or national of a designated country. Also, the alien may have personal knowledge that he is a national or citizen of a country for which call-in registration is required. An alien may make an oral declaration or affirmation to an INS officer that he is a citizen of a designated country. In those cases, the alien must register.

If an alien comes in after December 16, 2002, to register pursuant to the call-in notice, the alien should be questioned carefully about his failure to register timely in an effort to determine whether such failure was excusable and/or not willful. (See the Enforcement Guidance section on *Alien Otherwise in Status and Encountered After Registration Period Ended* for examples of where failure to comply with the call-in registration requirements may not be willful or may be reasonably excusable.) The interviewing officer should obtain supervisory concurrence before concluding that the failure was excusable and/or not willful, and the alien should be registered in NSEERS. If the alien is registered in NSEERS, the comments section should reflect the interviewing officer/supervisory determination. The alien should be referred for possible enforcement action if it appears that the failure to register was willful or not reasonably excusable.

In some instances, an out of status alien (previously admitted as a nonimmigrant) may request reinstatement to lawful nonimmigrant student status (8 CFR 214.2(f)(16)) or may submit an untimely request for extension of temporary stay (8 CFR 214.1(c)(4)). Consideration for approval should be made in coordination with the decision of whether to initiate removal proceedings. If the request for reinstatement or extension is approved, removal proceedings should not be initiated. If the request for reinstatement or extension is not approved, removal proceedings should ordinarily be initiated (subject to general prosecutorial discretion guidelines). Form I-539 may be accepted and adjudicated locally; however, Form I-129 must be submitted to the appropriate service center.

Enforcement Guidance

Enforcement officers should read and be well-informed regarding NSEERS regulations, notices, and policy guidance in order to determine if an alien is subject to, exempt from, or has been granted a waiver of the special registration requirements.

Enforcement officers' encounters with nonimmigrant aliens subject to the call-in registration requirements will generally occur as a result of referrals from officers performing the registration process or from field encounters. These encounters can occur either during the registration period set forth in any notice or after the registration period has expired.

Nonimmigrant aliens subject to special registration requirements will fall into three categories for action: aliens who are in status, abiding by the terms and conditions of their admission; aliens who are out of status, in violation of the terms of their admission or are otherwise in violation of the Act; and aliens who are subject to prosecution under the criminal provisions of the United States Code. In some cases, an alien may fall into more than one of these categories.

In all encounters, it is the enforcement officer's responsibility to reasonably verify the identity of the alien and determine the alien's immigration status. In general, standard procedures for enforcement actions will be followed.

Registration Referrals

As part of the registration process at district and sub-offices, record checks are run in IBIS. The resulting IBIS information may require a law enforcement response. Also, the interviewing officer may develop information leading to a reasonably founded belief that the alien may be subject to immigration or other law enforcement actions, or that the alien's actions, associations, or activities would be of enforcement interest. Generally, these matters should be referred to Investigations for handling and resolution. In some instances, Investigations officers may not be available, and enforcement officers from other programs (Inspections, Intelligence, Detention and Removal Operations, or the Border Patrol) may resolve the case. Enforcement officers must immediately respond to referrals in these instances and take the action required in each individual case.

Upon referral from call-in registration, enforcement officers will assume responsibility for processing the alien and any enforcement action that may be necessary. If referrals do not ultimately result in an enforcement action, appropriate action pursuant to district or sector policy must be taken to register the alien and record and capture the action taken in the NSEERS IDENT/ENFORCE database.

Field Encounters

Enforcement officers can encounter nonimmigrant aliens subject to call-in registration requirements during the course of routine investigative activities, when aliens are already detained in INS custody, during fugitive operations, when aliens offer to post bond for other individuals, during worksite enforcement operations, jail checks, and traffic checkpoints, and in a variety of other ways. Referrals also may come from local, State, or Federal law enforcement agencies.

Alien in Status and Encountered During Registration Period

If the encounter occurs during the registration period set forth in the FR Notice and the alien is in status and not otherwise deportable, enforcement officers are responsible for advising the alien of the registration requirement and instructing the alien

to report to the appropriate INS district or sub-office for registration. Aliens encountered in some places, such as at checkpoints, or at remote satellite offices, Border-Patrol stations, or ports of entry not in convenient proximity to districts or sub-offices, may request to be registered when encountered. Enforcement officers should do so, where feasible. In those cases, refer to the Registration Guidance in this memorandum and to parts (a)(4) and (a)(10) of the September 5 Policy Memorandum for more information on registering aliens.

Alien Otherwise in Status and Encountered After Registration Period Ended

Enforcement officers may encounter aliens subject to the call-in registration requirement who have failed to register, but who are not otherwise deportable. In such a case, the enforcement officer should carefully question the alien to determine the reason for failure to comply with the registration requirements.

An alien who willfully fails to appear for the call-in registration and/or comply with the applicable special registration requirements after appearing for the call-in is deportable under section 237(a)(1)(C)(i) of the Act for failure to maintain nonimmigrant status. In addition, an alien who fails to appear for the call-in registration prescribed by the FR Notice is deportable pursuant to section 237(a)(3)(A) of the Act, unless the alien establishes to the satisfaction of the Attorney General that the failure was reasonably excusable or was not willful. For additional guidance, the "Penalties" section of this memorandum should be reviewed.

If the enforcement officer, after carefully questioning the alien, believes that the alien's failure to register may not be willful or may be reasonably excusable, the enforcement officer must contact his or her supervisor for concurrence. If the determination is made, with supervisory concurrence, that failure to comply with the call-in registration requirement was not willful and/or was reasonably excusable, and the alien is otherwise in lawful status, the enforcement officer's supervisor will direct that the alien *not* be processed as a deportable alien. Rather, the enforcement officer will be directed to register the alien in NSEERS as a call-in registrant who can then be released. The narrative in the NSEERS/ENTORCE record will reflect the decision and justification. See the section on Registration Guidance for additional processing instructions.

Supervisory concurrence for Border Patrol agents will be from the duty Assistant Chief Patrol Agent or his or her designee.

Examples where failure to comply with the call-in registration requirements may not be willful or may be reasonably excusable include, but are not limited to, alien's hospitalization; alien's being a patient in a nursing home or extended care facility where mobility is severely limited; or alien's being able to satisfy the enforcement officer and the officer's supervisor that the alien simply was not aware of any of the registration requirements.

If the enforcement officer concludes the alien's failure to register was willful or not reasonably excusable, the alien will be processed in accordance with existing policy and procedure. The narrative portion of Form I-213 will clearly articulate the enforcement officer's reasons for concluding that the alien's failure to comply with the registration requirements was willful and not reasonably excusable. Form I-213 also will show supervisory concurrence with the enforcement officer's action.

Alien Out of Status

If an encounter occurs during the registration period and the alien is out of status, the enforcement officer will process the alien for removal in accordance with outstanding policy and procedure.

If the encounter occurs after the registration period and the alien is otherwise out of status, enforcement officers will process the alien for removal in accordance with outstanding policy and procedure. Additionally, if the alien has failed to comply with the call-in registration requirements, the enforcement officer will follow the procedure described above in the *Registration Period Ended* section to determine whether to add additional removal charges for failure to comply with any call-in registration requirement.

Custody and Bond Determinations

The Attorney General has determined that call-in registration is necessary for closer monitoring of certain aliens in the national security and/or law enforcement interests of the United States. The October 7, 1998, policy memorandum from the Executive Associate Commissioner for Field Operations, *Detention (Guidelines Effective October 9, 1998)* (Detention Guidelines), provides that he may make an exception to the general detention rule to accommodate special national enforcement initiatives (Section IV.B.3). Based on this provision, and because of national security concerns, the detention priority given an alien arrested for failure to comply with a call-in registration requirement will be equal to the priority given to Category 1 cases in the Detention Guidelines memo. District Directors and Sector Chiefs retain the discretion stated in Part I (Introduction) of the Detention Guidelines memo to alter the detention priority for an individual alien based on the facts of the case.

Aliens Already Detained in INS Custody

Aliens subject to call-in registration who are already in INS custody must be registered only if the alien will be released from INS custody for any reason other than removal from the United States. It is not necessary to register aliens who are subject to call-in registration, but have not been registered, as long as they remain in INS custody. Aliens released from custody for any reason other than removal from the United States

will be registered prior to their release. Upon completion of registration, the alien's evidence of alien registration must be annotated with the fingerprint identification number (FIN) above the family name. The words "SPECIAL REGISTRANT - CALL-IN" will be annotated or stamped on the alien's evidence of alien registration. Refer to the "Registration Guidance" (above), and parts (a)(4) and (a)(10) of the September 5 Policy Memorandum for more information on registering aliens.

Removal Operations

DRO officers should refer to part (e)(5)(A) of the September 5, 2002, Policy Memorandum for more information on capturing departure information for an alien being prepared for removal who already has been registered. An officer preparing an alien for departure may find that the alien was subject to the call-in registration, but was never registered. If the alien is removed from the United States, registration is not required. The removal should proceed according to standard INS policy.

Referral for Prosecution

Please refer to the "Penalties" section of this memorandum for information about criminal penalties for failure to comply with the call-in registration requirements. Current practices and policies within each district or sector for referrals to the U.S. Attorney's Office for criminal prosecution will be followed.

Conclusion

Combined efforts from personnel in all programs are essential to the successful implementation of this important Attorney General directive. Field personnel having questions regarding this memorandum should refer their questions through established protocol to the appropriate Headquarters personnel who are available for guidance: Inspections - Steven Dearborn, 202-305-2970; Benefits - Leonard Gradowski, 202-307-0208; Investigations - Angela Clay, 202-353-7311; Detention and Removal - Bret Bradford, 202-353-7774; and Border Patrol - Steve Evans, 202-616-7444.