

**RECEIVED****U.S. CUSTOMS AND BORDER PROTECTION  
Department of Homeland Security**

AUG 14 2003

CUSTOMS MANAGEMENT CENTER  
SOUTH PACIFIC-LONG BEACH*Memorandum*

JUL 30 2003

MAN-1-FO: PO CM

**TO:** Directors, Field Operations  
Director, Preclearance Operations

**FROM:** Assistant Commissioner  
Office of Field Operations

**SUBJECT:** Attorney Representation During the Inspection Process

The Office of Field Operations is issuing this memorandum to re-emphasize the procedures that govern legal representation during an applicant's primary and secondary inspection. The same regulation applies currently as was in effect before the creation of Customs and Border Protection. Title 8 CFR 292.5(b) states:

...nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.

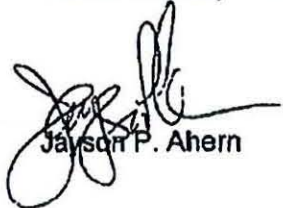
This regulation governs primary and secondary inspections conducted at ports-of-entry and also deferred inspections, which are the continuation of a secondary inspection conducted at an onward office. If an attorney accompanies a deferred inspection applicant to their interview, a supervisory inspector may allow the attorney to be present. However, the role of the attorney should be as an observer and consultant to the applicant. The attorney should not be allowed to direct the questioning or answer for the applicant.

The restriction on legal representation during primary and secondary inspection does not preclude inspectors from allowing a family member, friend, or other accompanying helper from being present during an applicant's primary or secondary inspection in appropriate circumstances. Examples of these include the inspection of minors, elderly persons, inexperienced travelers, or whenever the accompanying helper can assist in providing information pertinent to the inspection.

*Vigilance ★ Service ★ Integrity*

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If you have any questions, please contact Mr. Robert Jacksta, Executive Director,  
Border Security and Facilitation, at (202) 927-0530.



Jayson P. Ahern

**CBP/ AILA Meeting of December 9, 2008**

**Non-responsive to the request**

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2.) **Non-responsive to the request**

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3.) **Non-responsive to the request**

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7.) Immigration attorneys sometimes have clients who are detained at the CBP barracks in San Ysidro. Attorneys calling the barracks are often told that they cannot visit their clients at the barracks. However, they have been told that material witness attorneys are permitted to visit clients at the barracks. What is the CBP reasoning for denying immigration attorney's access to clients in the barracks?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

8.) Does CBP have a fax number to which attorneys can fax a G-28 document to the CBP barracks in San Ysidro for client signature?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

9.) May an attorney appear in person at the barracks in order to allow a client to sign a G-28 form or to review documents given by CBP to the client?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

Non-responsive to the request

Non-responsive to the request

11.) After taking an alien into custody, how long does it normally take for CBP to file an NTA with the Immigration Court?

**Answer: CBP does not file the NTA with the immigration court. The filing of the NTA with the immigration is handled by ICE/DRO.**

12.) If a detained individual is not issued an NTA within 72 hours of being taken into custody, is there a specific supervisor who can be contacted to confirm why the individual is not being released or alternatively issued an NTA?

**All detained individuals must have their port processing completed and be transported to a detention facility within 24 hours. If the 24-hour clock is nearing its end, the individual may be transported to the Barracks 5 facility, where they may be housed temporarily while bed space is being secured at the CCA facility. If an individual is taken to the Barracks 5 facility and no NTA has been served yet, they will be brought back to the port of entry for the NTA to be served before being transported to the CCA facility.**

**CBP Liaison Questions for March 2, 2009 Meeting**  
**With AILA and LACBA**

**1. Deferred Inspections**

Non-responsive to the request

Non-responsive to the request

b. Non-responsive to the request

Non-responsive to the request

c. Has there been any change in your policy concerning attorney representation at deferred inspection?

Response: There is no entitlement to representation during a deferred inspection. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant. An attorney may be allowed to be present upon request if the Supervisor on duty deems it appropriate.

d. What are the logistics?

Response: This question is unclear as to its precise meaning.

e. How can a member of the public contact DI?

Response: Call (213) 830-5972

f. What is the contact information for attorneys?

Response: Call (213) 830-5972



CBP Standard Operating Procedures for Secondary Immigration Case Processing  
**OTHER**

**INADMISSABLE ALIENS**


Non-responsive to the request



Non-responsive to the request



Non-responsive to the request



Non-responsive to the request

**Dealing with Attorneys and Other Representatives**

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the *Adjudicator's Field Manual*, Chapter 12, and 8 CFR 292.5(b)

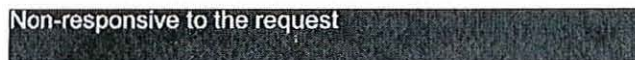
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**RESTRICTIONS ON ACCESS TO COUNSEL**  
**AT PORTS OF ENTRY**

Within the entire St. Albans Area Port, all Port Directors confirm that the memorandum issued on July 30, 2003 by the Assistant Commissioner (A/C), Office of Field Operations memo, MAN-1-FO: PO CM, is what is used as guidance in allowing attorney representation during the inspection process. While all locations do allow the presence of attorneys, they are also guided by Title 8 CFR 292.5 (b), which identifies that "...nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." As such, "...the role of an attorney should be as an observer and consultant to the applicant. The attorney should not be allowed to direct the questioning or answer for the applicant."

Despite the allegations set forth in the excerpt from *Attorney #1*, there is no new official policy of the region to bar counsel from L and TN adjudications. What has, in fact, changed over time is the fact that there are no longer Free Trade Examiners at the larger ports, and therefore the attorney's no longer have that sole officer they deal with on all matters. They now deal with numerous CBP officers, depending upon who might be on duty on any given day. At Highgate Springs, attorneys are allowed in the lobby and are allowed to even remain at the counter interacting with the officers and their client during the secondary inspection process. However, attorneys are not allowed to answer the admissibility questions for their client. At Derby Line, attorneys are allowed to be present but not to participate or answer questions for the applicant.

There is not now, nor has there ever been, an official policy to bar counsel from L and TN adjudications at Highgate Springs and Derby Line Ports of Entry. It should be noted that applicants for TN's do not, as a general rule, have an attorney accompanying them when they arrive at the Port of Entry. This has been confirmed in all locations. Additionally, while Highgate Springs is the only Deferred Inspection location within the St. Albans Area Port, there is no policy to bar counsel during this process either; however counsel is never allowed to answer questions for the applicant.

While the letter to the Commissioner paints a grim picture of CBP Officers being overly zealous in the performance of their duties, Port Directors within the St. Albans Area Port maintain open lines of communication with many of the attorneys who do assist clients in their processing of TN or L applications. While not every issue is able to be resolved to the attorney's satisfaction, there has always been positive dialogue and open communication, and never has there been any indication that there was dissatisfaction with the process.

Currently, most officers are able to process TN applicants for admission, and both Derby Line and Highgate Springs have a select cadre of Customs and Border Protection (CBP)



Officers who are trained and have become extremely proficient in adjudicating L applications.

While the issues presented are definitely cause for concern, if in fact they have occurred as stated, conversations with the Port Directors at both major areas indicate that they have never been presented with any issues arising to this level. While questions may arise from time to time, neither the local ports nor the Area Port has received inquiries or complaints from anyone voicing concern about the way that their processing was handled.

The below identified guidelines are shared with all officers and supervisors monitor the inspectional areas to insure that whenever possible issues are resolved, as soon as possible after they arise.

#### Guidelines for Law Professionals

- Law professionals may enter the port of entry.
- Law professionals may sit near their clients and confer quietly with them.
- Law professionals may interact with a CBP Officer if the officer requests it. At the counter, the officer will interact with the applicant.
- Law professionals are asked not to have more than three (3) clients present at any one time as the lobby chairs are for other applicants for entry as well. It would be best if applicants could be scheduled at intervals so as not to have more than one present at a time. If situations warrant, exceptions can be made.
- Law professionals may enter the POE at other times to speak with officers or supervisors.