

OBP (b) (7)(E)

SEP 30 2015



U.S. Customs and
Border Protection

MEMORANDUM FOR: All Chief
All Direct
FROM: Michael J.
Chief
U.S. Border Patrol

(b) (6)

SUBJECT: Clarification of Processing Procedures for Credible Fear

Recently, the Office of the Inspector General (OIG) conducted an audit of the U.S. Border Patrol's processing of credible fear claims. Based on the OIG report, non-governmental organizations have expressed a concern about the prosecution of individuals claiming credible fear. Due to the scrutiny of credible fear claims and the possible prosecution of those individuals, the attached *Credible Fear Processing Procedures Guide* must be followed and the required information documented in all A-Files when a subject claims credible fear. If a subject claims credible fear at any time while in U.S. Border Patrol custody, up to and including while being transported by G4S, then the subject should be returned to a U.S. Border Patrol station to be processed as such. Stations and processing centers need to coordinate with G4S to ensure adherence to this process.

Ensuring that the credible fear processing procedures are adhered to maintains the credibility of the Consequence Delivery Program by ensuring that all of an individual's rights are upheld. For example, the expedited removal process allows for the removal of certain aliens without an immigration hearing unless the alien indicates an intention to apply for asylum or expresses a fear of persecution, fear of torture, or a fear of return. It is important to maintain the integrity of the expedited removal process by ensuring the required questions are asked and detainees are provided the appropriate avenue to make credible fear claims. U.S. Border Patrol Headquarters will review credible fear claims regularly to ensure compliance with policy and processing guidelines.

The attached *Credible Fear Processing Procedures Guide* was developed to remind agents that they have the responsibility to ask credible fear questions during processing and to utilize the Notice of Rights and Request for Disposition, Form I-826; the Record of Sworn Statement, Form I-867A; the Jurat Record of Sworn Statement, Form, I-867B; and the Information about Credible Fear Interview, Form M-444. It is also important to document the encounter and the circumstances of the subject's credible fear claim in the narrative of the Record of Deportable Alien, Form I-213.

Please ensure that the attached *Credible Fear Processing Procedures Guide* is briefed to all agents and supervisors. In addition, the *Credible Fear Processing Procedures Guide* should be posted where all agents will have it available to reference during processing.

Staff may direct questions to Operations Officer (b)(6);(b)(7)(C) in the Analysis Division at U.S. Border Patrol Headquarters, (b)(6);(b)(7)(C)

Attachment

Credible Fear Processing Procedures Guide

The purpose of this guide is to clarify the internal procedures used by the U.S. Border Patrol when identifying and processing aliens who claim credible fear. The process by which the U.S. Border Patrol documents credible fear claims is being scrutinized. To ensure proper processing of these claims, please adhere to the guidelines below.

When documenting CF claims in sworn statements it is imperative that the information documented is that of the subject making the CF claim. All data must be correct and accurate.

Example of Inaccurate Information Entered: An unaccompanied child 3 years old with a sworn statement stating that the subject was looking for work and the occupation marked as "Laborer".

The Credible Fear (CF) process is administrative in nature but can include criminal charges. The guidelines for documenting a CF claim and prosecuting a subject have been broken down separately below:

Documenting CF for Adults:

1. Agents are to thoroughly document a subject's claim of CF and the reason for expressing fear. Agents are not the deciding official as to whether a CF claim is valid or not; the validity of a CF claim is determined by the asylum officer. Agents are to document the CF claim in the e3 Detention Module using forms I-867A, I-867B and M-444. A subject may claim credible fear at any time while in U.S. Border Patrol custody up to the point that they are turned over to ICE/ERO. Upon hearing a claim of credible fear, the subject should be immediately returned to a processing center to process the claim. Stations must coordinate with G4S to ensure this happens.
2. Agents should also document any information that could be relevant to the subject's CF claim in the narrative of the I-213. Some examples of questions that should be considered are:
 - a. (b)
 - b. (7)
 - c. (E)
 - d. (E)
3. Supervisors will verify that all subjects that express CF have been identified in e3 Processing, have an accurate disposition and ensure that all relevant information is included in the I-213 narrative. The supervisor will also ensure that each CF file contains the necessary CF forms: I-867A, I-867B and M-444.

Note: The validity of a CF claim is determined by an asylum officer and not the agent.

Documenting CF for Unaccompanied Alien Children (UACs):

All UACs are required to be properly screened as per the Trafficking Victim Protection Act (TVPPRA) using the current CBP Form 93. CBP Form 93 includes four specific questions related to determining if a UAC may have a CF claim. The four questions must be asked in their entirety and the answers must be documented. Agents are not limited to asking only the questions on CBP Form 93. The provided questions, in CBP Form 93, are intended to establish a dialogue with the UAC that may allow agents to gather additional information to assist in their determination.

Prosecution of Aliens Claiming CF:

1. The decision to prosecute will fall on the processing supervisor. If a subject is to be prosecuted due to criminal history or other circumstances this information must be clearly annotated in the I-213

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narrative. When taking into account whether to prosecute a subject, all options should be explored so that the most fitting consequence is utilized.

By documenting all relevant information pertaining to CF claims we can prosecute and remove aliens through the most effective means possible.

How to document CF in e3 Processing:

Credible Fear can be documented in multiple locations and in every pathway in e3 Processing. (b) (7)(E)

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I-826/770

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CF can also be documented through the Disposition page (page 4) by selecting any disposition that has "CF", such as ER/CF.

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During the ER Pathway, CF can be indicated on the 867-B as well.

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If CF is indicated on any of the forms, the M-444 will be mandatory.

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Documenting and/or verifying CF through e3 Detention Module (e3DM):

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Authorities

Section 235(b)(1)(A)(iii) of the Act provides the Secretary of Homeland Security with the authority to apply the expedited removal provisions.

This section of the INA applies to aliens in the U.S. who have not been admitted or paroled, and who have not affirmatively shown, to the satisfaction of the immigration officer that they have been continuously physically present in the U.S. for the 2-year period immediately preceding the date of determination of inadmissibility. Although these provisions were not initially applied to aliens who entered without inspection, the regulations provide that the Secretary may elect to apply the expedited removal provisions at any time, to any aliens specified in this section, by publication of a notice in the Federal Register.

A Federal Register Notice was published August 11, 2004. This Notice applies only to aliens encountered within:

- 14 days of entry and
- 100 air miles of the U.S. international border.

Section 235(b)(1) provides that if an Immigration Officer determines that an alien who is arriving in the U.S. is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the INA, the officer will order the alien removed from the U.S., without further hearing or review, unless the alien indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to his or her country.

Section 212(a)(6)(C) relates to fraud or willful misrepresentation of a material fact to procure a visa, other documentation, or admission into the U.S. or other benefit provided under the Act, or false claim to U.S. citizenship for any purpose or benefit under the INA including section 274(a) or any other Federal or State law. Use of the section 212(a)(6)(C) charges is complex.

Some key points to consider regarding fraud and misrepresentation are:

1. The procurement of a document, admission or benefit by fraud or misrepresentation, must have been done from a government official, not a counterfeiter. OR
2. The fraud or misrepresentation must have been practiced on a U.S. Government official.
3. The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.
4. The fraud or misrepresentation must be material.
5. Silence or failure to volunteer information does not in itself constitute a misrepresentation.
6. Generally, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, usually at the first opportunity.

All charges must make sense and must be well documented, supported by the evidence, and addressed in the sworn statement.

Section 212(a)(7) relates to lack of valid immigrant or nonimmigrant entry documents.

If another ground of inadmissibility applies, the government may decide to charge the alien with an additional ground or grounds of inadmissibility.

If the government charges any other grounds, the alien must be referred for 240 proceedings rather than using the expedited removal process.

Memorandum and policy dated August 11, 2004 titled Expedited Removal Policy