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New England Chapter



Know Your Rights: What to Do if You are Detained at a Port of Entry (F & J visa holders)

All people arriving at the U.S. border or a port of entry have basic rights, **but non-immigrant visa holders, such as F1 and J1, have very little legal recourse.** Like all international travelers, F1 /J1's are subject to inspection by U.S. Customs and Border Protection (CBP) when arriving at a port of entry such as an airport or land border. CBP will screen you to determine whether you are "**admissible.**" They will want to match all information you previously provided with the answers you give upon inspection.

If questions arise and CBP is unable to admit you quickly, you may be taken to a separate area for "secondary inspection." A referral by itself is not adverse, but you can expect to be detained anywhere from a few minutes to several hours or longer. **During secondary inspection, CBP will ask you questions** and may collect biographic and biometric data, run records checks, search your bags and your electronic devices and otherwise attempt to determine whether you should be admitted to the United States as a F1/J1.

If you are detained by CBP in secondary inspection, you have the following rights:

- To ask CBP for permission to contact your lawyer. CBP will likely tell you that you do not have the right to speak to an attorney or to be represented by an attorney while applying for admission. Asking to speak to your attorney cannot be held against you.
- To review all written statements that are prepared for you, in a language that you can understand and to get a copy of the documents.
- Not to sign any papers if you do not agree with the contents or you do not understand them.

- You likely do **not** have a right of privacy to protect your electronic devices. CBP may search your device, access your email and screen your social media activity during the inspection process. Your devices may be held and returned to you later if you refuse to share passwords.
- Not to be questioned about your religious or political beliefs. Ask for a supervisor if this happens. You can file a complaint later so get the officers' names.
- Iranians should be aware that questions can be and will be asked regarding your and your family's bank accounts, assets, companies and property because Iran is subject to sanctions by the United States.

If CBP determines that you are "inadmissible," you may be offered the opportunity to "withdraw your request for admission to the USA." This is generally a preferred method of being removed because it does not carry a 5 year bar from entering the USA that attaches with an expedited removal order. If CBP does not offer you the opportunity to withdraw your request to enter, make the request. If not granted, you will be processed for expedited removal. This can happen for many different reasons, including:

- Having been determined to be an immigrant- someone that does not intend to return home;
- Having been found to have committed fraud, such as providing false information or using a fake passport or visa;
- Engaging in illegal activity, such as violating US sanctions laws;

You do not have a right to a Hearing before an Immigration Judge (unless you express a fear of returning to your home country) or to legal representation if you subjected to expedited removal.

How to help yourself. CBP may attempt to pressure you to admit to things that you did not do or they may urge you to sign Form I-867A or B without allowing you a chance to review the forms for accuracy. It is important to know:

- Be honest. Do not be belligerent. Do not say “I don’t know” if you **do** know the answer. Better to say “no comment.”
- Form I-867 & related forms must be signed voluntarily. **You may refuse to sign any form you do not understand and there are no negative consequences for doing so.**
- Get the officer’s or officers’ names who are interviewing you.
- Ask for an interpreter if you are not fully comfortable in English. Especially when you are nervous, it can be hard to speak and understand a second language.
- Demand to make a phone call, and if they refuse to allow the call, ask to speak to a supervisor.
- If you are allowed to make a phone call, be sure it is someone that can help contact an attorney.
- Request that the CBP officer tell airline staff that you can have your electronics as soon as the doors are closed.
- Once you are in the plane, write down the details of everything that occurred, including the questions asked, your answers, the officer’s name, and all other details. Get in touch with an AILA attorney when you can so they can pursue any legal recourse you may have.

Future Travel. To avoid delays at the ports of entry or legal issues in the future, you should consult with an immigration attorney prior to traveling if you:

- Are of Middle Eastern background; or
- Have studied in a field considered to involve “sensitive technology;” or
- Have worked for a company that is directly or indirectly tied to a sanctioned company or industry.
- There is anything in your immigration history that was not disclosed during your immigration process or that might cause a government official to question you about the reason for your travel or about your immigration history.

Lastly, if possible, travel so that you arrive in the United States between Monday through Friday, 9-5pm.

**Thank you to AILA New England members Mahsa Khanbabai & Kerry Doyle for this update.*