Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528

March 30, 2023

MEMORANDUM FOR: Troy A. Miller
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U.S. Customs and Border Protection

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FROM: Peter E. Mina (b) (6) [redacted]
Senior Official Performing the Duties of the
Officer for Civil Rights and Civil Liberties

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SUBJECT: Recommendations Regarding Cancellation of
F-1 Visas of Iranian Nationals
Complaint Nos. 20-04-CBP-0347, 20-04-CBP-0409,
20-04-CBP-0435, 20-05-CBP-0359, 20-05-CBP-0384,
20-05-CBP-0389, and 21-06-CBP-0286

Purpose

This memo provides recommendations regarding U.S. Customs and Border Protection (CBP) Office of Field Operations cancellation of the F-1 nonimmigrant student visas of Iranian nationals.

Background

In January and February 2020, the U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) received a number of complaints alleging that CBP had violated noncitizens' civil rights and civil liberties, made legally flawed inadmissibility findings, wrongly cancelled F-1 visas resulting in the placement of noncitizens in expedited removal, and

wrongly applied a five-year bar to admission. Given the number and serious nature of these allegations, CRCL opened a retained complaint investigation to examine the extent to which CBP's use of its discretionary authority may have violated noncitizens' civil rights and civil liberties.

On June 15, 2020, CRCL notified CBP leadership that it would retain the above-referenced complaints as a representative sample for investigation and issued a request for information specific to those complaints. CRCL also requested relevant CBP policies, procedures, and guidance regarding the Iranian nationals applying for admission to the United States using valid F-1 visas.[1]

Investigation

CRCL conducted an extensive review of the responsive material provided by CBP and all available DHS and CBP records. Our goal was to evaluate and assess whether CBP's use of its discretionary authority complied with all applicable DHS directives, policies, and procedures to ensure all appropriate civil rights and civil liberties protections. Additionally, following the factual analysis, CRCL considered whether improvements could be made to internal CBP processes and procedures to better protect civil rights and civil liberties.[2]

Complaint 20-04-CBP-0347

On January 30, 2020, CRCL received correspondence from the Harvard Immigration and Refugee Clinic, on behalf of Complainant 1, an Iranian national arriving to begin studies in theology at Harvard University.

On September 18, 2019, Complainant 1 presented CBP officers at Boston Logan International Airport (Logan) a valid unexpired passport, an unexpired F-1 Visa, and a Form I-20.[3] She was referred to secondary inspection as a one-day lookout. CBP Tactical Terrorism Response Team officers (TTRT) at Logan interviewed Complainant 1and questioned her regarding her previous

[1] Following the issuance of the retention documents, CRCL received an additional complaint raising similar allegations. Complaint 21-06-CBP-0286 was sent to CBP as a short form complaint on March 26, 2021 and is included in this investigation.

[2] It is CRCL's statutory role to provide policy advice with regards to issues and initiatives that may have an impact on civil rights and civil liberties. As such, CRCL must defer to the CBP Office of Chief Counsel and the DHS Office of General Counsel's legal analysis regarding INA statutory standards and regulatory requirements provided in this section.

[3] The U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Program (SEVP) oversees certified U.S. schools and the nonimmigrant students they enroll on behalf of DHS. The Student and Exchange Visitor Information System (SEVIS) is the database used for maintaining information on nonimmigrant students and exchange visitors in the United States. SEVIS implements section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which requires DHS to collect current information from nonimmigrant students and exchange visitors continually during their course of stay in the United States. SEVIS assures proper reporting and record keeping by schools and exchange visitor programs, thereby ensuring data currency and integrity. SEVIS also provides a mechanism for student and exchange visitor status violators to be identified so that appropriate enforcement is taken. An "Active" indication in SEVIS means that a noncitizen has been accepted to an SEVP-certified school, has been issued a valid Form I-20 by that institution, and after admission into the United States, is maintaining his or her nonimmigrant student status.

employment as an industrial engineer in Iran.[4] In addition, TTRT conducted an advanced search of her electronics for national security reasons and to further determine her admissibility.

The Form I-213 narrative of the secondary inspection of Complainant 1includes information discovered during her secondary inspection related to her employment at Sanaye ab va Omran Iran Co. (SAICO) from September 2013 until September 2018. According to TTRT Logan open-source research, SAICO is involved in the Iranian oil and gas industry and is listed as a vendor for numerous companies with Office of Foreign Asset Control (OFAC)[5] sanctions.[6] Officers determined that she had not met her burden to demonstrate that she was an admissible as an F-1 nonimmigrant student and had not met her burden to overcome the presumption that she was an intending immigrant. TTRT Logan determined that Complainant 1 was "inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA)[7] as an immigrant without valid immigrant document."[8] She was subsequently placed in expedited removal proceedings[9] and issued an order of removal; she returned to her home country of Iran and is barred from re-entry to the United States for a period of five years.[10][11]

Complaint 20-04-CBP-0409

On January 16, 2020, CRCL received correspondence from the National Iranian American Council (NIAC) regarding two noncitizens :1) Complainant 2, a Ph.D. student from Iran; and 2) Complainant 3, an incoming graduate student at Iowa State University.

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[4] Tactical Terrorist Response Teams are specialized teams of CBP officers dedicated to counterterrorism operations.

[5] The Department of Treasury's Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

[6] Form I-213 Narrative 1: Created Date: 09/29/2019 02:30 AM.

[7] Section 212(a)(7)(A)(i)(I) of the INA: Any [noncitizen] who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA, or who is not in possession of a valid unexpired passport, or other suitable document, or identity and nationality document if such document is required by regulations issued by the Attorney General pursuant to INA § 211(a).

[8] Form I-213 Narrative 1: Created Date: 09/29/2019 02:30 AM.

[9] Under INA § 235(b)(1)(A)(i), noncitizens are subject to expedited removal if an immigration officer determines the noncitizens are arriving in the United States or falls under the grounds of inadmissibility found in INA § 212(a)(6)(C) and (a)(7).

[10] All noncitizens removed pursuant to expedited removal are subject to a five-year bar to admission to the United States.

[11] Section 212(a)(9)(A)(i) of the INA states that any noncitizen who has been ordered removed under INA § 235(b)(1) and who again seeks admission within five years of the date of their removal is inadmissible. A noncitizen who has been ordered removed under INA § 235(b)(1) and who again seeks admission in a nonimmigrant visa category within those five years may do so by filing a Form I-212, which is the Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal, in conjunction with applying for a nonimmigrant visa; note that the U.S. Consulate with jurisdiction over the nonimmigrant visa application will advise the noncitizen on whether and how to file to obtain consent to reapply for admission. If the Form I-212 is required, the noncitizen must file the Form I-212 and obtain an approval before returning to the United States. A grant of a Form I-212 waives the inadmissibility ground at INA § 212(a)(9)(A)(i) relating to the noncitizen's prior expedited removal order. If other inadmissibility grounds apply, the noncitizen will have to concurrently file for a waiver, if any, of those other grounds.

On December 13, 2019, Complainant 2 presented the CBP officer at Los Angeles International Airport (LAX) a valid unexpired passport, an unexpired F-1 Visa, and a Form I-20. He was referred to secondary inspection with TTRT LAX based on a positive association to a person of interest and was questioned regarding his association with this individual. In addition, TTRT conducted an advanced search of his electronic devices based on TTRT's assessment that he presented a threat to national security.

The Form I-213 narrative includes information discovered during the secondary inspection of Complainant 2 indicating that he had recurring contact with an individual affiliated with the Islamic Revolutionary Guard Corps (IRGC) and had been employed by a company associated with that same individual.[12] TTRT LAX determined that he was not a bona fide student, he had not met his burden to demonstrate that he was admissible to the United States as a F-1 nonimmigrant student, and had not met his burden to overcome the presumption that he was an intending immigrant. TTRT LAX found him inadmissible pursuant to 212(a)(7)(A)(i)(I) of the INA as "an intending immigrant without immigrant visa."[13] He was subsequently allowed to withdraw his application for admission in lieu of expedited removal.

On December 22, 2019, Complainant 3 arrived in Boston and presented the CBP officer at Logan a valid unexpired passport and an unexpired F-1 visa. She was referred to a secondary inspection based on a TECS record match. During the inspection, Logan CBP officers questioned her about possible family ties to the Iranian military and conducted an advanced search of her electronic devices based on national security concerns.

The Form I-213 narrative includes information discovered during the secondary inspection of Complainant 3 that she had previously been employed as a procurement and logistics expert for a company that, based on TTRT's open-source research, had OFAC-sanctioned entities as clients.[14] The Form I-213 narrative states that TTRT Logan could not "determine the subject's true intentions while in the United States under her F1 visa due to derogatory information found during the subject's immigration inspection."[15] Officers determined that Complainant 3 had not met her burden to demonstrate that she was admissible as an F-1 nonimmigrant student and had not met her burden to overcome the presumption that she was an intending immigrant. Her visa was ultimately cancelled, and she was found inadmissible to the United States pursuant to INA § 212(a)(7)(A)(i)(I).[16] CBP placed her in expedited removal proceedings and issued an order of removal; she returned to her home country of Iran and is barred from re-entry to the United States for a period of five years.[17]

Complaint 20-04-CBP-0435

On January 20, 2020, CRCL received correspondence from a Senior Staff Attorney at the

[12] Form I-213 Narrative 1: Created Date: 12/13/2019 11:42 PM
[13] Ibid.
[14] Form I-213 Narrative 1: Created Date: 12/22/2019 10:51 PM
[15] Ibid.
[16] Form I-213 narrative
[17] Ibid.

American-Arab Anti-Discrimination Committee (ADC) on behalf of Complainant 4, an Iranian citizen returning to the United States to continue his undergraduate degree in Mathematics and Economics at Northeastern University in Boston.

On January 19, 2020, Complainant 4 presented the TTRT officer at Logan a valid unexpired passport, an unexpired F-1 Visa, and a Form I-20. Complainant 4 was a match to an Automated Targeting System-Passenger threshold lookout and was referred to a secondary inspection. TTRT Logan questioned him about his opinion of Iranian political leaders and his father's military service with the Islamic Revolutionary Guard Corps (IRGC). TTRT Logan also conducted an examination of his electronic devices "due to his recent travel to two source countries of terrorism and to determine his admissibility."[18]

The Form I-213 includes information discovered during TTRT Logan's preliminary research that Complainant 4's father has a possible business relationship with a company under OFAC sanctions. In addition, TTRT Logan discovered images of IRGC leaders and pro-Iranian content during its search of his electronic devices.[19] As per the Form I-213 narrative, "[d]ue to derogatory information being discovered during his secondary exam Complainant 4 was determined to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the INA as an immigrant without valid immigrant document as the true intent of his trip could not be determined."[20] Officers determined that he had not met his burden to demonstrate that he was admissible as an F-1 nonimmigrant student and that he had not met his burden to overcome the presumption that he was an intending immigrant. CBP cancelled his visa, placed him in expedited removal proceedings, and issued an order of removal. He returned to his home country of Iran and is barred from re-entering the United States for five years.

Complaint 20-05-CBP-0359

On February 7, 2020, CRCL received correspondence on behalf of Complainant 5, who was returning to complete his Ph.D. at Northeastern University in Boston. Complainant 5 had previously been admitted three times on his F-1 visa, with his first admission on April 28, 2019.

On October 6, 2019, Complainant 5 presented the TTRT officer at Logan a valid unexpired passport and an unexpired F-1 Visa. Complainant 5 was referred for secondary inspection as a match to a TTRT one-day lookout related to his current enrollment as a Ph.D. student in electrical engineering and his master's degree in Satellite Communications from Iran University of Science and Technology. During his secondary inspection, he was questioned about his previous internship at a company affiliated with OFAC-sanctioned entities. In addition, TTRT conducted an advanced search of his electronic devices based on national security concerns.

The Form I-213 narrative of the s secondary inspection of Complainant 5 at Logan includes information that he had interned for the MAPNA Group, an Iranian energy company, for eight months from October 2014 to July 2015. As per TTRT open-source research, MAPNA conducted business with a company that assisted in shipping products to a Chinese company

[18] Form I-213 Narrative 1: Created Date: 01/20/2020 10:16 PM
[19] Ibid.
[20] Ibid

(JPE) that had previously violated Iranian sanctions during the period of his internship. The Form I-213 narrative also includes an identified discrepancy between Complaint 5's responses to TTRT questions and the resume Mr. Moradi had submitted to the State Department consulate. During his secondary inspection, he admitted to that he had only interned for MAPNA for three months rather than the seven months listed on his resume. CBP determined that he had altered his resume by misrepresenting the length of his internship to the Department of State in order to enhance qualifications on his resume for admission purposes.[21] According to the Form I-213 narrative, TTRT officers could not determine his "true intent due to derogatory information found during the subject's immigration inspection," and he was found to be inadmissible under INA § 212(a)(7)(A)(i)(I).[22] Officers determined that Complainant 5 had not met his burden to demonstrate that he was admissible as an F-1 nonimmigrant student and that he had not met his burden to overcome the presumption that he was an intending immigrant. He was also found to be inadmissible under INA § 212(a)(6)(C)(i) as a noncitizen who procured a visa by fraud or willfully misrepresenting a material fact, by providing false documentation to a consular officer in order to obtain a visa.[23]

A motion to vacate the expedited removal order was subsequently filed at the Boston Field Office. The expedited removal under INA § 212(a)(7)(A)(i)(I) was upheld by the District Field Office, with the INA § 212(a)(6)(C)(i) charge dropped.

Complaint 20-05-CBP-0384

On January 30, 2020, CRCL received correspondence from the Council on American-Islamic Relations (CAIR), regarding Complainant 6, a returning graduate student at Georgia Institute of Technology.

On January 10, 2020, Complainant 6 presented the TTRT officer at Hartsfield-Jackson International Airport (Hartsfield-Jackson) a valid unexpired passport and an unexpired F-1 Visa. She was referred to secondary inspection based on a TTRT one-day lookout.

The Form I-213 narrative includes information that she was returning to attend her Post Master Industrial Design program at Georgia Tech and was linked to [named individual].[24] TTRT Hartsfield-Jackson provided the birthdate of the named individual but no further information.[25] Officers determined that Complainant 6 had not met her burden to demonstrate that she was admissible as an F-1 nonimmigrant student and that she had not met her burden to overcome the presumption that she was an intending immigrant. As per the Form I-213 narrative, TTRT officers determined her "true intentions could not be verified therefore she could not overcome the presumption of being an intended immigrant."[26] The Form I-213 further states that "based on the information above the subject is inadmissible to the United States pursuant to section

[21] Form I-213 Narrative 1: Created Date: 10/02/2019 10:20 PM
[22] Ibid.
[23] Ibid.
[24] Form I-213 Narrative 1: Created Date: 01/22/2020 01:29 AM
[25] Form I-213 Narrative 1: Created Date: 01/22/2020 01:29 AM
[26] Ibid.

212(a)(&)(A)(i)(I) of the INA, immigrant without an immigrant visa."[27] (b) (7)(E) [redacted][28]

Complaint 20-05-CBP-0389

On February 18, 2020, CRCL received correspondence on behalf of Complainant 7, an incoming Ph.D. student of Material Science and Engineering at Worcester Polytechnic Institute near Boston, Massachusetts.

On August 19, 2019, Complainant 7 presented the TTRT at Logan a valid unexpired passport and an unexpired F-1 Visa. He was referred to secondary inspection as part of Logan TTRT's "Operation Early Dismissal". As part of the secondary inspection, he was questioned regarding his previous work for an Iranian oil and gas company. Logan TTRT also conducted an advanced search of his electronic devices for national security reasons.

The Form I-213 includes information discovered during secondary inspection that from September 2016 until April 2019, Complainant 7 had worked for Rajan Petr Farayand, an Iranian oil and gas consulting company affiliated with the National Iranian Oil Company (NIOC). Open-source research conducted by TTRT Logan indicated that NIOC was under OFAC sanctions from 2012 to 2016, which were reimposed in 2019 for its support to the IRGC.[29] As per the Form I-213 narrative, TTRT Logan found Complainant 7 "inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the INA as amended because he is an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and National Act to wit: he cannot overcome the presumption of an intending immigrant as his s true intent cannot be determined due to information discovered during the admissibility inspection."[30] CBP placed Complainant 7 in expedited removal proceedings and ordered him removed; he returned to his home country of Iran and is barred from re-entering the United States for five years.

Complaint 21-06-CBP-0286

On February 19, 2021, CRCL received correspondence from Khanbabai Immigration Law on behalf of Complainant 8, a returning data science graduate student at Clark University in Worcester, Massachusetts.

On January 27, 2021, Complainant 8 presented the TTRT officer at the Lewiston Bridge Port of Entry with an unexpired passport and an unexpired F-1 visa. She was referred to a secondary

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[27] Ibid.

[28] (b) (7)(E) [redacted].

[29] Form I-213 Narrative 1: Created Date: 08/24/2019 02:12 PM.

[30] Ibid.

inspection due to national security concerns. TTRT officers conducted an advanced search of her electronic device based on national security concerns.

(b) (7)(E) [redacted][31] After TTRT's consultation with the Watch Commander and the Chief CBP officer, the determination was amended to inadmissible under INA § 212(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired immigrant visa or other valid entry document. Subsequently, CBP, in its discretion, permitted her to withdraw her application for admission; Complainant 8 chose to withdraw her application for admission.

Applicable Statutory and Regulatory Authorities

It is CRCL's statutory role to provide policy advice with regards to issues and initiatives that may have an impact on civil rights and civil liberties. As such, CRCL must defer to the CBP Office of Chief Counsel and the DHS Office of General Counsel's legal analysis regarding INA statutory standards and regulatory requirements.

Section 101(a)(15) of the INA states that "[t]he term 'immigrant' means every [noncitizen] except a[] [noncitizen] who is within one of the following classes of nonimmigrant [noncitizens]."[32]

[31] (b) (7)(E) [redacted]

[32] As relevant here, a noncitizen F-1 visa applicant must demonstrate to a Department of State consular officer at the time of application for a visa, and to a CBP officer at the time of application for admission, that they are admissible as a F-1 nonimmigrant under INA § 101(a)(15)(F)(i) as:

> [A][] [noncitizen] having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(*l*) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the [Secretary] after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the [Secretary] the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn.

See INA § 101(a)(15)(F)(i).

Under 8 C.F.R. § 214.2(f)(1)(i), a nonimmigrant student may be admitted into the United States in nonimmigrant status under INA § 101(a)(15)(F) if:

> (A) The student presents a SEVIS Form I-20 issued in his or her own name by a school approved by [DHS] for attendance by F-1 foreign students. In the alternative, for a student seeking admission

Section 214(b) of the INA states that every noncitizen (with certain exceptions) shall be presumed to be an immigrant until they establish to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that they are entitled to a nonimmigrant status under INA § 101(a)(15).[33] Thus, in all cases in which a noncitizen is applying for admission to the U.S. as a nonimmigrant, the INA requires that in order to be admitted as a nonimmigrant, the noncitizen must both overcome the presumption that they are an intending immigrant and meet the requirements for the nonimmigrant classification under which the noncitizen is applying for admission. The noncitizen must also be otherwise admissible, such that a noncitizen may only be admitted if they both overcome the presumption of immigrant intent and meet their burden to show that they are admissible.[34]

In three of the allegations reviewed for this investigation, the Form I-213 does not document that

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prior to August 1, 2003, the student may present a currently valid Form I-20A-B/I-20ID, if that form was issued by the school prior to January 30, 2003;

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID);

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID); and

(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.

See 8 C.F.R. § 214.2(f)(1)(i).

Furthermore, the full regulations at 8 C.F.R. § 214.2(f), implementing INA § 101(a)(15)(F), provide additional requirements. Meeting the documentary requirements under 8 C.F.R. § 214.2(f)(1)(i) does not obviate the need for a noncitizen to continuously demonstrate that they meet the definition of a bona fide student under INA § 101(a)(15)(F). These requirements include, among others, demonstrating that that a noncitizen is actually coming for the purpose of studying at a SEVP-certified institution and not for any other purpose, including without limitation unauthorized employment or any activity prohibited by U.S. law.

[33] INA § 214(b): Every [noncitizen] (other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of this title. A[] [noncitizen] who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act [22 U.S.C. 288 et seq.], or a[] [noncitizen] who is the attendant, servant, employee, or member of the immediate family of any such [noncitizen] shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257(b) of this title.

[34] INA § 291 ("Burden of proof upon [noncitizen]"): "Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter, and, if a[] [noncitizen], that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the [Secretary] that he is not inadmissible under any provision of this chapter.

the TTRT officers found that the noncitizens failed to overcome the statutory presumption of immigrant intent but documented only that the noncitizens were found inadmissible pursuant to INA § 212(a)(7)(A)(i)(I). In the other five allegations reviewed, the Form I-213 states that due to derogatory information discovered during secondary inspection, the noncitizen's true intent for entering the United States could not be established, and the noncitizens therefore could not meet their burden to overcome the presumption of immigrant intent under INA § 214(b).

As a noncitizen applying for admission must overcome the presumption of immigrant intent, they must present sufficient information to the inspecting CBP officer to show that they can overcome that presumption. If the noncitizen fails to do so to the satisfaction of the inspecting officer, the noncitizen can be found inadmissible pursuant to INA § 212(a)(7)(A)(i)(I) in addition to any other applicable grounds of inadmissibility. ln each allegation examined in this investigation the noncitizen presented the inspecting CBP officer with an unexpired passport, an unexpired F-1 visa and had an active SEVIS Form I-20 issued in their name by a school approved by DHS for attendance by F-1 foreign students but were unable to demonstrate to the satisfaction of the inspecting officer that they met the requirements for admission as a F-1 nonimmigrant and they were unable to satisfy the inspecting CBP officer that they could overcome the presumption of immigrant intent.[35] Once the inspecting CBP officer determined that the noncitizens failed to overcome the statutory presumption of immigrant intent, they were treated as an intending immigrant. As they were unable to present an immigrant visa, the noncitizens were found inadmissible under INA § 212(a)(7)(A)(i)(I) as intending immigrants without an immigrant visa.

The INA requires that a noncitizen who seeks admission to the United States as a nonimmigrant must meet the documentary requirements and demonstrate to the CBP officer that they both: 1) seek to enter for the purpose of the nonimmigrant visa classification under which the application for admission is being made and 2) overcome the statutory presumption that they are an intending immigrant. According to CBP, its determination whether a noncitizen has overcome the statutory presumption may be based on a number of different factors. CBP highlighted the admissibility determination of Complainant 7 as an example of the appropriate application of the INA's legal standard for nonimmigrant admission. As previously discussed, Complainant 7 had been able to establish to the satisfaction of the consular officer at the time of his visa application that he was eligible for a nonimmigrant visa under INA § 101(a)(15)(F)(i) and presented the inspecting CBP Officer with an unexpired passport and an unexpired F-1 visa and had an active SEVIS Form I-20 issued in his name by a school approved by DHS for attendance by F-1 foreign students . However, Complainant 7.was not able to demonstrate to the inspecting CBP officers upon his application for admission that he intended to enter the U.S. for the purpose of the F1 visa and he could not overcome the presumption of immigrant intent. CBP officers could not determine, his true intent for admission based on information discovered during his admissibility inspection. CBP's Form I-213 narrative documents a number of national security concerns identified by CBP officers related to Complainant 7's previous employment.

[35] While 8 C.F.R. § 214.2(f), enumerates the baseline documentation an F-1 nonimmigrant student must display to CBP upon arrival in order to apply for admission into the United States under section 101(a)(15)(F) of the Act, the documentary requirements are non-exclusive and the foregoing provisions of the INA still require a noncitizen applying for admission as an initial or returning student to demonstrate nonimmigrant intent and the sole intent of entering to pursue studies at an SEVP certified institution..

Civil Rights and Civil Liberties Analysis

As previously discussed, it is CRCL's statutory role to provide policy advice with regards to issues and initiatives that may have an impact on civil rights and civil liberties. As such, CRCL defers to the legal analysis provided by CBP OCC and DHS OGC regarding the INA's requirements that a noncitizen seeking admission as a nonimmigrant must meet both the requirements for the nonimmigrant visa classification under which they have applied for admission and overcome the presumption of immigrant intent. However, CRCL has significant concerns that CBP does not have sufficient policies, procedures, or guidance regarding the implementation of that standard. For example, CBP does not have sufficient policies, procedures, or guidance in place establishing the factors that an inspecting CBP officer may consider in finding that a noncitizen has not met their burden to overcome the presumption of immigrant intent or has not met their burden to demonstrate that they are seeking to enter as an F-1 nonimmigrant student including consideration of national security concerns that are indicative that the noncitizen has intentions to threaten national security rather than (or in addition to) attending school separate and apart from a finding that the noncitizen is inadmissible under INA 212(a)(3). Nor does CBP have sufficient policies, procedures, or guidance regarding what information a noncitizen seeking admission as a nonimmigrant could provide an inspecting CBP officer to overcome a presumption of immigrant intent based on national security concerns.

CRCL believes that this absence of sufficient policies, procedures, or guidance affords inspecting CBP officers' extraordinary latitude to make admissibility determinations in ways that potentially violate civil rights and civil liberties and do not reflect the DHS commitment to ensuring the fair and equitable treatment of all people regardless of race, religion, or nationality.[36] Specifically, there is a heightened risk that an inspecting CBP officer may potentially make a determination that a noncitizen could not meet their burden to demonstrate they are seeking to enter as an F-1 nonimmigrant student and overcome the statutory presumption of immigrant intent based on general assumptions about a noncitizen's nationality, race, ethnicity, religion, etc. An additional concern is that the inspecting CBP officer's finding that a noncitizen did not overcome the presumption of immigrant intent is, in practice, non-reviewable.[37]

Based upon CRCL's review, there are indications that TTRT Officers may have inappropriately considered nationality when determining whether applicants for admission had met both the

[36] Executive Order 13985, January 20, 2021, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*; Department of Homeland Security, Memorandum for Component Heads from Secretary Napolitano, *The Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and* Screening *Activities* (August 2013); Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (December 2014).

[37] Once a CBP officer determines a noncitizen is inadmissible under INA § 212(a)(7), the officer may order the noncitizen removed pursuant to INA § 235(b). If a noncitizen in expedited removal expresses a desire to apply for asylum or a fear of persecution, the noncitizen is referred for a credible fear interview by an asylum officer. If the asylum officer determines the noncitizen has a credible fear, the noncitizen will be transferred from INA § 235(b) expedited removal proceedings to INA § 240 removal proceedings before an immigration judge. In all of the allegations CRCL investigated, the noncitizen had demonstrated to the satisfaction of a consular officer that they had strong ties to their home country. The only mechanism, however, for the noncitizens to be placed in INA § 240 removal proceedings before an immigration judge would have been to indicate an intention to apply asylum or a fear of persecution. As such, the findings of the inspecting CBP Officers' are, in practice, non-reviewable.

requirements for admission as a F-1 nonimmigrant and overcome the presumption that they were intending immigrants. Two such indications are as follows: (1) the allegations are all by Iranian citizens seeking admission as F-1 nonimmigrants, who were determined not to have met their burden to demonstrate they were seeking to enter as a F-1 nonimmigrant and not to have overcome the presumption of immigrant intent; and (2) the timing of the allegations coincides with CBP's Operation Early Dismissal, which explicitly targeted Iranian F-1 visa applicants. CBP notes that in each of the allegations, the noncitizens were found inadmissible as intending immigrants without immigrant visas based on all facts available to the inspecting officer, including information regarding the noncitizen's connections to national security concerns However, as previously discussed, CBP does not have sufficient policies, procedures, or guidance in place specifying how national security concerns may be decisive in an officer's determination of whether the noncitizen meets their burden to establish that they are admissible as an F-1 nonimmigrant and have overcome the presumption of immigrant intent. As such, there is the potential that the inspecting CBP officers' findings of inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I) and based on the consideration of national security information acquired during inspection were improperly informed by the noncitizen's country of birth and citizenship

CRCL is similarly concerned that CBP does not have any policies requiring the documentation of the objective articulable information supporting the inspecting CBP officer's determination that the applicants failed to meet the requirements for admission in the nonimmigrant visa classification under which the application was made and failed to overcome the presumption that they are an intending immigrant. Consequently, there are no means of evaluating if an inspecting CBP officer's use of their authority relating to admissibility determinations, including the statutory presumption of immigrant intent, are consistent with all applicable DHS civil rights and civil liberties policies designed to safeguard against the invidious use of race or ethnicity. Specifically, there is weakness that could be exploited, that a CBP officer may use their authority to make admissibility determinations based solely on a noncitizen's race, ethnicity, or nationality.

Conclusions

CRCL concludes that:

1. (b) (5) [redacted]
2. CBP officers are not required to provide a record of the objective articulable facts supporting their conclusions that a noncitizen has failed to overcome the legal standard that a noncitizen must meet both the requirements for admission in the nonimmigrant visa classification under which they have applied for admission and overcome the presumption that they are an intending immigrant. Although not a legal requirement, CRCL believes such records are critical for CRCL and CBP to evaluate any allegations that CBP actions improperly impacted applicable DHS civil rights and civil liberties policies and guidance, such as the Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities.

Recommendations[38]

1. As per the July 11, 2022, memo issued by DHS Secretary Mayorkas, *Coordinating Departmental Policies and Programs with the Privacy Office and the Office for Civil Rights and Civil Liberties*, CBP should coordinate with CRCL to develop new and additional policies, procedures, guidance, and training regarding the implementation of the legal standard that noncitizens must meet both the requirements for admission in the nonimmigrant visa classification under which they have applied for admission and overcome the presumption of immigrant intent. The policies, procedures, and guidance should include, but should not be limited to, the national security factors that may be determinative that a noncitizen does not meet the requirements of the nonimmigrant visa classification and cannot overcome the statutory presumption of immigrant intent. CBP and CRCL should provide quarterly status updates on the development of the additional policies, procedures, guidance, and training to CBP and CRCL senior leadership until fully implemented. Upon completion, CBP should issue an OFO muster describing operational procedures related to F-1 applicants for admission, including the application of applicable legal standards.

2. CBP should issue a reminder memo and muster to CBP officers that, in addition to documenting that a noncitizen seeking admission as an F-1 nonimmigrant student was found inadmissible as an intending immigrant without an immigrant visa under INA § 212(a)(7)(i)(I), the CBP officer should also document the articulable objective facts supporting the determination that the noncitizen did not meet their burden to establish they were seeking to enter as a F-1 nonimmigrant and overcome the presumption of immigrant intent. If the CBP inspecting officer is unable to include the objective facts supporting that determination due to potential national security sensitivities, the articulable objective facts should be documented in the appropriate CBP systems.

3. In order to fully assess that inspecting CBP officer's admissibility determinations are consistent with all applicable DHS policies and guidance related to the protections of individual civil rights and civil liberties such as the Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities, CBP should, in coordination with CRCL, develop an appropriate internal civil rights and civil liberties audit process to assess the operational implementation of DHS protections of civil rights and civil liberties and recommend appropriate next steps for remediation. CBP should collect data necessary to implement such process, and share such information with CRCL, as necessary and appropriate to complete such assessment. Specifically, the data should be collected on the country of citizenship and country of birth of noncitizens seeking admission in a nonimmigrant classification with immigrant intent provisions determined to have not met the INA's requirements that a noncitizen must meet the requirements of the nonimmigrant classification and overcome the presumption of

[38]It is CRCL's statutory role to provide policy advice with regards to issues and initiatives that may have an impact on civil rights and civil liberties. As such, CRCL must defer to the CBP Office of Chief Counsel and the DHS Office of General legal analysis regarding INA statutory standards and regulatory requirements. All of CRCL's recommendations with deference to DHS OGC and CBP OCC's legal analysis regarding INA statutory standards and regulatory requirements.

immigrant intent.[39]

It is CRCL's statutory role to advise Department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP to determine the best way to resolve these complaints. We request that CBP provide a response to CRCL within 120 days indicating whether it concurs or does not concur with these recommendations. If you concur, please include an action plan. Please send your response and any questions to (b) (6) CRCL will share your response with (b) (6), the Team Lead who conducted this investigation.

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[39]The following nonimmigrant visa classifications do not have immigrant intent provisions including: A, C, D, G, I, K, N, O-1, R, S, T, and U categories. Nonimmigrant visa classifications B, E, F, J, M, O-2, P, Q, and TN categories do possess an immigrant intent requirement either by statute or regulation. See INA § 101(a)(15).

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