U.S. Department of Justice
Office of the Inspector General

A Review of the Norfolk Ship Jumping Incident

Office of the Inspector General
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I. Introduction

This report describes the Office of the Inspector General's (OIG) investigation regarding the actions of Immigration and Naturalization Service (INS) employees in connection with a "ship jumping" incident that occurred in Norfolk, Virginia, in March 2002. When a Russian cargo ship docked in Norfolk on March 16, 2002, the crew did not have individual visas, which generally are required for entering the United States. Following a database search of the crewmen by an INS Immigration Inspector and an inspection of the crew by an INS Supervisory Immigration Inspector, the crew was granted a waiver of the visa requirement. The Immigration Inspectors, however, had not requested or received the proper authority for granting such a waiver. According to a change in INS policy issued on November 28, 2001, approval for waivers had to be given by certain INS officials in District Offices.

Four of the 27 crewmen failed to return to the ship prior to its departure from Norfolk on March 18, 2002. The four deserters, commonly referred to as "ship jumpers," were from Pakistan. When this incident came to light, the INS detailed the Officer in Charge of the Norfolk Sub-Office, William Bittner, to the Washington District Office. The media and some members of Congress also focused significant attention on this incident, which occurred at the same time that the INS was under scrutiny for having informed a Florida flight school six months after the September 11 terrorist attacks that two of the terrorists' change-of-status applications had been approved previously.

The OIG investigated the Norfolk incident to determine why the ship jumpers had been given waivers in violation of the changed INS policy and whether the Norfolk office had been notified of the changed policy. During our investigation, the OIG interviewed over 40 INS employees, including Immigration Inspectors, Supervisory Immigration Inspectors, Officers in Charge (OIC), Assistant District Directors for Inspections, Assistant District Directors for Examinations, Deputy District Directors, District Directors, Regional Directors, and INS Headquarters officials. We interviewed individuals in the offices directly involved in the Norfolk incident, as well as other randomly selected offices, to determine if and how they received the changed policy for granting waivers.

Following a brief background explanation of how alien crewmen can enter the country and what happens when they fail to leave with their vessel, this report describes the facts surrounding the Norfolk ship jumping incident and the INS's response to it. We discuss in detail whether the Norfolk office had been informed

of the change in INS policy. We also examined broader issues as to the INS's general practice on disseminating policy changes throughout the INS. We found that there is no uniformity as to how the INS disseminates new policies or ensures compliance with new policies. At the end of our report, we make several recommendations to improve the INS's distribution of new policies.

II. Background

A. INS Structure

The INS is currently organized into three management components – INS Headquarters, 3 regions, and 33 districts in the United States.[1] Commonly, the districts are collectively referred to as "the field."

The three INS regional offices – the Eastern Regional Office, the Central Regional Office, and the Western Regional Office – serve as intermediary managers of the districts. Each regional office is led by a Regional Director and a Deputy Regional Director. The districts are managed by a District Director, a Deputy District Director, and various Assistant District Directors. Some Districts have sub-offices, which are led by OICs who report to the District Offices. OICs, like District Directors, have responsibility for many INS program areas, including investigations, inspections, detention and removal, and enforcement.

The processing of nonimmigrants who arrive at points designated as legal places through which to enter the country – known as ports of entry – is handled by INS Immigration Inspectors and Supervisory Immigration Inspectors.

The INS's Office of Field Operations is most significantly involved in supervising the day-to-day operations of the field and has responsibility for implementing INS policies. When the new policy relevant to this review was issued in November 2001, the Office of Programs was responsible for policy development. Since mid-March 2002**,** the policy functions of the Office of Programs relating to inspections have been placed under the Office of Field Operations.

[1] The INS also has three foreign district offices in Bangkok, Mexico City, and Rome, as well as several other overseas offices.

B. Visas and Visa Waivers

1. Entrance of nonimmigrants into the United States

The Immigration and Nationality Act provides that aliens may be admitted to the United States as nonimmigrants (that is, aliens who do not intend to permanently reside in the United States) for "such time and under such conditions as the Attorney General may by regulations prescribe." 8 U.S.C. § 1184(a)(1). Federal regulations state that every nonimmigrant must present at the time of entry "a valid passport and a valid visa unless either or both documents have been waived." 8 CFR § 214.1(a)(3). These regulations also require non-immigrants to depart the United States at the expiration of their authorized period of admission or upon abandonment of their authorized nonimmigrant status. 8 CFR § 214.1(a)(3).

2. Crewmen visas

Although immigration law normally requires nonimmigrants to have individual valid passports and visas, crewmen of foreign vessels are permitted to enter on a "crew list visa." Crew list visas are obtained by a ship's agent or master from an American Consular Officer prior to the ship's entry into the United States.

In order to obtain a crew list visa, normally a representative of the ship will take the crew list, which is written on an INS Form I-418, to a United States embassy or consulate. If the crew list visa is granted, the Form I-418 will be stamped with a "D" visa. There are times, however, when it is not feasible for crew list visas to be obtained before the ship enters the United States – for instance, when the ship receives orders to sail for the United States while at sea or because the ship sails from a port where there is no U.S. Consulate. In those situations, the INS may waive the visa requirement for the crew.

Prior to a commercial cargo ship's arrival in a port, the ship's agent must provide to the INS the crew list and Form I-418, with biographical information about each crewman on the list. This is true regardless of whether the crew has individual visas, a crew list visa, or no visas. Based on the list provided by the agent, the assigned Immigration Inspector is supposed to check all the names on the crew list against the Interagency Border Information System (IBIS), which contains "lookout" databases maintained by the U.S. Customs Service; the State Department; the Bureau of Alcohol, Tobacco and Firearms; the Drug Enforcement Administration; the Royal Canadian Mounted Police; and other law enforcement agencies. IBIS also includes warrants and arrests from the FBI's National Crime

Information Center (NCIC) database and lookouts posted in the INS's National Automated Immigration Lookout System (NAILS).

After the relevant databases have been checked, the Immigration Inspector or a Supervisory Immigration Inspector at the port of entry boards the ship and personally inspects the documentation of the crew members who are seeking to leave the ship. All individuals arriving in the United States, including alien crewmen, should be inspected. The individual crewmen must present requested documentation, such as a passport or a seaman book, and a Form I-95, Crewman's Landing Permit.[2]

The statutory and regulatory standards for allowing alien crewmen to temporarily land in the United States through a visa waiver are virtually identical. 8 U.S.C. § 1282; 8 C.F.R. § 252.1(d). Both sections provide that alien crewmen who otherwise are admissible may be given a permit to land temporarily at the discretion of the immigration officer. Neither section offers any criteria for evaluating alien crewmen or for determining when it is appropriate to grant or deny a request for a waiver of the normal documentary requirements of nonimmigrants seeking to land in the United States.

Thus, assuming that the ship agent is willing to pay the $195 fee for admission of the crew, the computer check does not indicate a "hit" (an indication of any record in the system for the crewman), and the inspector does not determine that there is any other reason to deny the alien crewman entry, the inspector may grant the crewman admission to the United States. In so doing, the inspector stamps the crewman's I-95 with the D-1 classification. A D-1 classification indicates that the individual is an alien crewman who is necessary to the normal operations of a vessel, the individual intends to land only temporarily, and the crewman will depart with the vessel on which he arrived. 8 U.S.C. § 1101(15)(D)(i).

In sum, crew members may only depart the vessel at a port of entry if they have obtained an individual "D" visa, a crew list visa has been obtained for them prior to arrival, they are granted a crew list visa waiver, or individual members of

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[2] A seaman's book is a work history log for each seaman. It is maintained by the ship's captain and used to keep track of a seaman's work history, job function, and training. It is reviewed by INS staff at ports of entry to determine if the holder of the book is a bona fide seaman. The landing permit is held by the crewmen and is endorsed to show the date and place of admission and the type of landing permit they hold.

the crew are paroled[3] into the United States. Individual visas or parole of a crewman apply to individuals, while a crew list visa or a crew list visa waiver applies to several crewman or the whole crew. This report specifically deals with crew list visa waivers.

Alien crewmen who are allowed to enter the country based on D-1 visas, a crew list visa waiver, or a parole are required to leave with their ship when it departs or within 29 days, whichever occurs first. 8 U.S.C. §§ 1282(a)(1)-(2). Deserting is the formal term used when a crewman has been permitted to leave the vessel but fails to depart with the ship. However, departing commonly is referred to as a "ship jumping."

It is the responsibility of the ship owner, agent, consignee, master, or commanding officer to inform an immigration officer at the port where the ship is located when there is a desertion. The failure to provide such notice can result in a fine of $200 per desertion. 8 U.S.C. § 1281(d).

C. Policy Change On Deferred Inspection, Parole, and Waivers of Documentary Requirements

Within the INS, prior to November 2001 the decision whether to grant a waiver of documentary requirements, including granting a crew list visa waiver, was within the discretion of INS Immigration Inspectors in the field. These decisions did not require approval beyond the port of entry.

On November 28, 2001, the INS Executive Associate Commissioner Office of Field Operations, Michael Pearson, issued a policy that, among other things, changed how INS Inspectors at ports of entry were supposed to deal with individuals seeking waivers of documentary requirements. Attached to Pearson's November 28, 2001, cover memorandum was the substance of the policy contained in another memorandum, dated November 14, 2001 (hereinafter the November 14 memorandum), signed by Michael Cronin, then the Acting Executive Associate Commissioner for the Office of Programs and currently the Assistant Commissioner for Inspections. A copy of the November 14 memorandum and the November 28 cover memorandum are attached as Exhibit A to this report.

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[3] Parole is not regarded as an "admission." Parole is sometimes granted for a limited number of ship's personnel to conduct essential business when the remainder of the crew is detained on board due to lack of a visa.

The November 14 memorandum provided that *only* District Directors, Deputy District Directors, Assistant District Directors for Inspections, or Assistant District Directors for Examinations had the authority to grant a waiver of any documentary requirement. The new policy stated that the authority to grant a waiver could not be delegated. The memorandum outlining the new policy stated, "This guidance does not change the existing statutory and regulatory standards for paroles and documentary waivers." Therefore, the criteria for granting waivers, which we described above, was unchanged by the new policy, but the authority to grant waivers was given only to certain specified officials in the INS.[4]

III. Norfolk Incident

A. Factual Chronology

The INS's Norfolk office is a sub-office within the INS's Washington District. Approximately 40 to 45 commercial vessels dock in Norfolk every month. In Norfolk, shipping agents are required to give 96 hours' notice before their ships arrive, by providing a crew list to the Coast Guard. Pursuant to an agreement between the Coast Guard and the INS, the Coast Guard faxes the INS a copy of the crew list.

The M/T Progreso, a Russian cargo ship, traveled to Norfolk from Novorossiak, Russia, with a stop in Gibraltar. The ship provided the Coast Guard with a crew list prior to its arrival on March 16, 2002. The Coast Guard considered the M/T Progreso a routine arrival.

The Coast Guard sent the crew list to the INS's Norfolk Sub-Office on March 15, 2002. At the Norfolk office, the crew list was given to an INS Immigration Inspector. The shipping agent had not obtained a crew list visa because the ship had come from Gibraltar, where there is no United States Consulate, and the ship's agent was not aware of the ship's destination when it departed Russia. Therefore, the crew needed a visa waiver to be allowed off the ship.

The INS's Norfolk Sub-Office performed its normal evaluation process to determine whether a visa waiver was appropriate. The Immigration Inspector ran

[4] On September 30, 2002, the INS issued a memorandum that expanded the authority to grant nonimmigrant unforeseen emergency waivers to Port Directors and OICs. See Exhibit B.

the names on the crew list through the IBIS database. None of the names entered drew a hit. There were, however, four or five names with incomplete information, and those names could not be queried in IBIS. The Inspector highlighted the names he was unable to check to alert the Supervisory Immigration Inspector who was going to perform the actual ship inspection on the M/T Pregreso.

On March 16, 2002, the Supervisory Immigration Inspector met the M/T Progreso when it arrived in Norfolk. She boarded the ship and met with the captain, who produced the crew list, I-95 landing passes, and passports for all crew members. The inspector reviewed the seaman's books for all the crew members to determine whether they were all bona fide seamen. In addition, the inspector questioned the captain about the crew. According to the inspector, the captain stated that they were longtime seamen and they were not a flight risk. The inspector said she also interviewed the crewmen and entered the four highlighted crewmen's names through Portable Alien Lookout System (PALS), with negative results.[5]

Based on the information from the captain, the negative database queries, and the ship's previous port, the Supervisory Immigration Inspector offered the captain a crew list visa waiver if the shipping agent was prepared to pay the $195 fee. The shipping agent paid the fee, and the crew list visa waiver was granted. As a result, the 27 crew members were allowed to leave the ship. The Supervisory Immigration Inspector had not been informed of any change in policy requiring District Office approval for granting waivers, and she handled this case consistent with the policy in effect prior to the issuance of the November 14 memorandum.

Two days later, on March 18, 2002, at 1:00 a.m., the M/T Progreso departed Norfolk. At 9:00 a.m. on March 18, the shipping agent informed the Supervisory Immigration Inspector that four Pakistani national crewmen failed to return to the vessel. At this time, the M/T Progreso was en route to Savannah, Georgia. The Norfolk Sub-Office called the Savannah INS office and told an Immigration Inspector there that four crewmen had failed to return to the M/T Progreso prior to its departure from Norfolk. A Savannah Immigration Inspector was asked to board the vessel and revoke the deserters' landing permits. Norfolk also left a message

[5] PALS is used during an inspection to recheck names or to process names that had insufficient information prior to boarding the vessel. PALS includes the databases NAILS and the Consular Lookout and Support System (CLASS).

for a Savannah Immigration Inspector requesting that he secure the four deserters' seaman books.

The Norfolk Supervisory Immigration Inspector also informed William Bittner, the INS Officer In Charge (OIC) of the Norfolk Sub-Office, that four crewmen had deserted the M/T Pregreso. Bittner called the Coast Guard and the Federal Bureau of Investigation (FBI) to inform them of the desertions. Bittner said this was his normal practice in response to reports of ship jumping.

The next day, on March 19, 2002, Bittner sent to Phyllis Howard, the INS Deputy District Director for the Washington District, a Significant Event Report about the four ship jumpers. Howard told the OIG that she received that report either that day or the next morning at the latest. Howard stated that she recalled being made aware of the Norfolk incident, but at the time she did not believe further action was necessary.

Howard stated that on March 20, 2002, Scott Blackman, the Regional Director of the INS's Eastern Region, called her to ask whether Bittner was in compliance with the November 14 memorandum, which required that waivers be granted only by specified INS District officials. Howard told the OIG that it had not occurred to her that there was a problem because she knew she had informed Norfolk after the November policy change that if waivers were necessary, the requests would need to come through the Washington District Office. Howard told the OIG that because she had not received any call requesting a waiver from the Norfolk Sub-Office, she believed that the ship jumpers in this case had not required visa waivers.

According to Warren Lewis, the INS District Director for the Washington District, the Washington District's process for granting waivers since the new policy went into effect in November 2001 was for the Immigration Inspector at the port of entry to conduct an inspection and provide a synopsis of the information gathered to Howard. The inspector would give a recommendation for granting the waiver and request concurrence from Howard. Lewis said he would take calls for waivers only if Howard was unavailable, but he said this did not happen often. He did not receive any call requesting a waiver related to this incident.

According to Bittner, on March 20, 2002, he and the rest of the Norfolk Sub-Office learned for the first time that they had granted the visa waiver to the Norfolk ship jumpers in violation of a new INS policy that had been issued in November 2001 requiring District Office approval for any waiver. Bittner said he became aware of the new policy through an e-mail on March 20, 2002, sent by Lois

Luczai, the INS Assistant Regional Director for Inspections, reminding recipients to comply with the November policy. A return receipt was required. Bittner responded that he received the e-mail and requested that a copy of the policy be faxed to Norfolk, which was done.

Bittner and an INS Supervisory Special Agent in the Norfolk Sub-Office coordinated the investigation of the four ship jumpers with the FBI. In coordination with the FBI, the INS contacted local hotels and transportation companies to try to locate the deserters. In addition, the FBI printed flyers with pictures of the four deserters and provided them to the local police.

B. INS Response

The INS informed us that between September 2001 and March 2002 there were a total of 253 ship jumpers throughout the country. In addition to deserters who received visas or waivers to leave their ships but did not return, this number includes those who left their ships without permission and failed to return to their vessel. Most of the INS employees we interviewed stated that non-criminal or non-terrorist ship jumpers are considered a low priority matter.

Moreover, ship jumping is generally not an issue that would be raised to INS Headquarters or even the regional office level. It is usually addressed locally. However, the INS focused significant attention on the Norfolk ship jumping incident, partly because of the nationality of the ship jumpers and partly because of other incidents at the time for which the INS was receiving significant criticism.

INS Headquarters management, including Deputy INS Commissioner Peter Becraft, Chief of Staff Victor Cerda, and Assistant Commissioner for Inspections Michael Cronin told us that they first became aware of the incident through Associate Deputy Attorney General Stuart Levey. Levey had learned of the desertions from the Coast Guard during a briefing on the day following the desertions, March 19, 2002.

INS Headquarters' concern was further aroused by the nationality of the ship jumpers, Pakistani. In addition, the INS was receiving significant criticism for the disclosure that it had sent notification to a Florida flight school that two of the September 11 terrorists' change-of-status applications had been approved previously. The notifications were sent six months after the terrorist attacks. On March 19, 2002, the House Subcommittee on Immigration and Claims, Committee on the Judiciary, held hearings on that incident.

On March 20, 2002, Cronin sought information about the Norfolk ship jumping incident from Eastern Regional Director Blackman. Blackman then called Norfolk OIC Bittner and asked whether Norfolk had acted in accordance with the November 14 memorandum when it granted the visa waiver for the deserters. Bittner stated to Blackman that he was unaware of the memorandum. Blackman later called Bittner back, with Deputy District Director Howard on the phone, and re-asked the question. According to Bittner, he again stated that he had no knowledge of the memorandum, but Howard stated that she and Bittner had discussed it. Bittner acknowledged to them having called Howard previously to ask about a memorandum, but stated that he had "never received any guidance or documentation on the policy."

Blackman and other personnel at INS Headquarters told the OIG that their concern with respect to the Norfolk incident grew upon learning that the new policy mandated by the November 14 memorandum had not been followed in Norfolk. They also learned there had been an error in checking databases. The INS discovered that one of the deserters appeared to be in a lookout system, but there had been no hit in the database due to a missed keystroke in entering the checked names.[6]

After speaking with Lewis, Howard, and Bittner, Blackman passed the information he obtained about the incident to INS Headquarters, along with a chronology he created. In addition, Bittner wrote an e-mail to Cronin on March 20, 2002, responding to the question whether Norfolk had followed the November 14 memorandum. The e-mail stated:

> No it [the November 14 memorandum] was not followed. I remember discussing this with the DDD [Deputy District Director Howard] and the referenced policy was to be forwarded for my review. However, the actual policy memorandum and instructions

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[6] INS Executive Associate Commissioner Johnny Williams told the OIG that a database hit on one of the deserters indicated that the deserter had attempted to enter the country in Chicago to join a ship. However, the ship he was supposed to join was not in Chicago. Williams stated that this is not uncommon, explaining that crewmen are sometimes duped into paying an agent money to join a crew, going to the location where they are told to go, only to discover they have been misled. The database further showed that the deserter agreed to withdraw his application for admission. Williams further stated that the deserters' removal at that time was not expedited, meaning that his deportation was not seen as requiring more consideration than a routine removal action.

were never received at our office. I spoke to the DDD tonight. The DDD will fax the memorandum to me, and she will be contacted on every item that fits the waiver process.

In this e-mail Bittner did not explain to Headquarters his argument, which he later told us and which we discuss below, that although he had briefly discussed the policy change with Howard, he was not aware of the substance of the policy.

Lewis, who was on leave when the incident occurred, said that he maintained contact with Blackman about the incident. Lewis stated that when Blackman learned the seriousness of the situation, Blackman suggested that Lewis cancel his leave and return to the District Office, which Lewis did.

On March 21, 2002, Blackman instructed Lewis to reassign Bittner to the District Office indefinitely. Lewis informed Blackman that an indefinite detail was impermissible, and they settled on a 60-day detail.

Lewis phoned Bittner and told him that he was being reassigned to the District Office for 60 days. Lewis also informed Bittner that he did not make the decision, and he did not believe that Blackman had made the decision either. Blackman confirmed to the OIG that he had not made the decision to detail Bittner, but that Executive Associate Commissioner Johnny Williams made that decision.

Williams confirmed that he made the decision to reassign Bittner. When the incident occurred, Williams just had been appointed to the position of Executive Associate Commissioner for Field Operations, and he was in California preparing to relocate to Washington. Williams stated that he conferred with Blackman, INS Chief of Staff Cerda, and Deputy Commissioner Becraft in reaching his decision to detail Bittner. According to Williams, by detailing Bittner he solved his immediate concern, which was to ensure that they had someone in Norfolk who knew the current policy for granting visa waivers and would follow that policy.[7]

Based on the information he received from Blackman, Williams believed that Bittner had known about the policy change, but because Bittner had not received a hard copy of that policy Bittner chose not to follow the new policy. Williams told the OIG that in reaching this conclusion he relied on Bittner's e-mail quoted above.

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[7] Bittner's detail has since been extended, and we were told that the detail would not be terminated until the OIG completed its investigation and the INS made a decision regarding the appropriate action to take.

When Lewis told Bittner he was being reassigned, Bittner drafted travel authorization papers that he forwarded to the District Office. Those papers were signed and sent back to Norfolk. That is the only paperwork Bittner has seen regarding his reassignment.

C. Outcome of Ship Jumping Case

The ship jumping case received significant public attention. In a press release issued on March 22, the INS reported the disappearance of the four crewmen. Justice Department officials expressed frustration with the incident, and Attorney General Ashcroft called it "maddening." He stated that the Department had launched a substantial investigation to find the ship jumpers.

As a result of this incident, Commissioner Ziglar issued a memorandum to INS employees announcing a "zero tolerance" policy. The memorandum stated:

> Effective immediately, I am implementing a zero tolerance policy with regard to INS employees who fail to abide by Headquarters-issued policy and field instructions. I would like to make it clear that disregarding field guidance or other INS policy will not be tolerated. The days of looking the other way are over.

Congress also inquired about the incident. On March 22, the chair of the House Judiciary Committee, James Sensenbrenner, wrote a letter to the INS asking for full details of the Norfolk desertions. In the letter, Congressman Sensenbrenner asked the INS to respond to questions about the inspection and waiver process generally and specifically as implemented in this case, as well as to provide details about the ship jumpers, and the efforts being made to capture them.

On March 30, 2002, one of the ship jumpers was arrested in San Antonio, Texas. Another ship jumper turned himself in at the INS District Office in Chicago, on April 9, 2002. The remaining two ship jumpers still have not been located.

IV. OIG's Analysis of the Norfolk Ship Jumping Incident

In this section of the report we discuss our findings regarding the Norfolk office's failure to apply the policy change imposed in the November 14 memorandum. We first discuss the evidence as to whether the Norfolk office or Bittner received the November 14 memorandum. We also discuss the INS's decision to detail Bittner because of this incident.

A. Norfolk's Knowledge of the Policy Change

As noted above, the memorandum that described the new policy regarding visa waivers had been sent on November 14, 2001, from Michael Cronin, the Acting Executive Associate Commissioner for Office of Programs, to Michael Pearson, the Executive Associate Commissioner for the Office of Field Operations. Pearson issued the new policy on November 28, 2001, to Regional Directors, Service Center Directors, and the Officer Development and Training Facility in Glynco, Georgia, along with a cover memorandum that provided a basic outline of the policy change.

The Eastern Region Director, Blackman, received the November 14 memorandum along with the cover memorandum by fax on November 28, 2001. He said the Eastern Regional Office forwarded a copy of the fax to all the District Offices in its region, also by fax. In addition to faxing the memorandum to the District Offices, the Eastern Regional Office sent an e-mail to all District Directors and Port Directors alerting them that the policy memorandum and its attachments would be arriving in their offices later that day. The e-mail was not, however, sent to Officers in Charge of sub-offices, and Bittner did not receive the e-mail.

We determined that the INS's Washington District Office received the fax with the November 14 memorandum and November 28 cover memorandum from the Eastern Region on November 30, 2001. The District Office's Administrative Assistant explained that when memoranda come into the Washington District Office, they are routed to Deputy District Director Howard for her review and for her to direct further distribution. Howard completes a distribution list stamped to the front of the memorandum to indicate who should be sent a copy. The Administrative Assistant then sends copies to the programs or offices checked by Howard, either by fax or by placing a copy in their mail slot. The Norfolk Sub-Office's mail is picked up by the mail room and sent by regular mail to Norfolk.

The Administrative Assistant maintains a copy of all items she sends by fax. In reviewing her file, however, she did not find a copy of the November 14 or the November 28 cover memorandum, which indicates that it was not faxed to the Norfolk office. District Director Lewis provided the OIG with the District Office's copy of the memorandum containing the distribution stamp. The Administrative Assistant told the OIG that based on the distribution stamp, which indicated that the Norfolk Sub-Office should get a copy, she believed that the memorandum would have been mailed to Norfolk. The District does not, however, keep records with respect to mail sent to Norfolk and could not verify that it was mailed to the Norfolk office.

A Program Assistant in the Norfolk Sub-Office is responsible for filing and distributing most mail and faxes received in the Norfolk Sub-Office. In addition, she files received memoranda and policies in subject folders. The Norfolk Sub-Office does not have a specific procedure for logging in mail or faxes. The Washington District Administrative Assistant told the OIG that the Norfolk Program Assistant is very good at her job, and if she had received the November 14 memorandum, she would have retained it. The Norfolk Assistant OIC was confident that if the memorandum had come to Norfolk, the Program Assistant would have forwarded it to him and Bittner, as well as filing it appropriately. The Program Assistant denied that the November 14 memo ever came to Norfolk, stating that if it had she would have known about it.

Howard told the OIG that while it is possible that Norfolk did not receive a copy of the November 14 memorandum, she believed that Bittner and the Norfolk Assistant OIC were aware of the November 14 memorandum, and thus the policy change. Howard asserted that she spoke about the new policy in at least two staff meetings. These staff meetings are held weekly, and Bittner and the Norfolk Assistant OIC participate on speakerphone. Howard asserted that at the staff meeting held during the week of December 4, 2001, she read in full Pearson's one-paragraph cover memorandum that transmitted the new policy. In addition, Howard stated that during a staff meeting she believed Lewis commented on the policy change and asked if everyone understood the memorandum.

The Administrative Assistant takes the official notes for the staff meetings, which she provided to the OIG for the December 2001 through January 2002 meetings. Her notes indicate that Bittner attended all of the staff meetings in December and January, but the notes do not reflect any discussion of the November 14 memorandum.

According to the Administrative Assistant, she does not take down every word that is spoken at each meeting. She said that, initially, she tried to get down everything that was said by everyone. Shortly after she started, however, District Director Lewis told her that he only cared that she get down what he says and responses to questions he asks. Beyond that, Lewis said she only needed to get down the big picture. She was not required to create a narrative, but rather only bullets of the highlights from the meeting. She stated that even if Howard had read the November 28 cover memorandum in the meeting, she might not have included it in the meeting notes because Lewis was not the speaker and he did not tell her to include it.

There were several other individuals in attendance at one or both of the staff meetings in which Howard claims to have read the November 28 cover memorandum and discussed the November 14 memorandum. Among them were the INS Port Director for Dulles Airport, the Assistant District Director for Investigations, the District's Public Affairs Officer, the Assistant District Director for Deportation and Removal, the Acting Assistant District Director for Examinations, and the Assistant Port Director for Dulles Airport. At these staff meetings everyone is physically present except for employees of the Norfolk Sub-Office, who participate by phone.

No one we spoke to remembered that Howard read the November 28 cover memorandum to the November 14 memorandum at a staff meeting. Further, no one had any specific recollection that she raised the November 14 memorandum or the November 28 cover memorandum at a staff meeting. Moreover, the notes taken by several participants during the December and January meetings and the official minutes are very similar. None of the notes indicate any conversation about the November 14 memorandum.

Like Bittner, two other attendees did not recall any discussion of the November 14 memorandum during the course of any staff meeting in December or thereafter. But several other attendees did recall that Howard and members of the Dulles Airport staff briefly mentioned the November 14 memorandum in the context of how many phone calls Howard would be receiving. Although some thought the discussion occurred during a meeting, others were unsure, and still others thought it was either after the meeting or during a side conversation rather than a part of the meeting. District Director Lewis stated that while he believes the Norfolk officers should have heard the conversation about the memorandum, he acknowledged that no one checked with Norfolk during the call to verify that they did, or to ensure that they were aware of what needed to be done if a waiver or parole was requested.

Howard also told the OIG that before the December 20, 2001, staff meeting, Bittner called her about the November 14 memorandum. She stated that she recalled that Bittner and the Norfolk Assistant OIC joked with her that she would be receiving calls at all hours of the night because of the change in policy. She stated that she instructed Bittner to call with any questions after he received the memorandum.

Bittner acknowledged to the OIG that he called Howard to inquire about a policy change. He said that he made the call on January 7, 2002. Bittner stated he knew the date because he initiated the call to Howard after speaking with Gary

Hale, the OIC of the INS's Albany New York Sub-Office, about their respective holiday vacations. Bittner stated that during his conversation with Hale, Hale mentioned a policy change regarding parole and waivers. According to Bittner, however, the focus of their conversation was personal, and the policy change was mentioned only in passing.

Hale told the OIG that the conversation with Bittner occurred in early January. Hale stated that he asked Bittner about the effect the policy change "requiring the District's approval on all waivers" was having on Norfolk, which had much more traffic than Albany. According to Hale, he also told Bittner "what [Hale] had to do concerning this new policy requiring the District approval on all waivers."

Bittner said that following this conversation with Hale he had contacted Howard about the policy change that Hale had raised in order to find out the specifics of the change. Bittner said that the Norfolk Assistant OIC also was present with him when he called Howard. The Assistant OIC stated that during the conversation among Howard, Bittner and himself, the specifics of the policy were not discussed, but Bittner asked about a new policy changing the guidance for issuing visa waivers, paroles, and deferred inspections. The Assistant OIC further stated that Howard said she would fax the policy to Norfolk.[8]

The Washington District Office's Administrative Assistant stated she believes that Howard told her to fax to Bittner a copy of a memorandum entitled, Guidelines for Inspection of Aliens Requiring Advance Parole, dated December 29, 2000, not the November 14, 2001, memorandum, in response to the conversation between Bittner and Howard. The Administrative Assistant based her belief on the fact that the fax cover sheet with the December 29 document indicates it is from Howard, but the smiley face on the bottom shows that it was actually faxed by the Administrative Assistant. The Administrative Assistant faxed the December 29 memorandum, and the Norfolk date stamp on the memorandum is January 7.

The December 29 memorandum that was faxed addressed guidance for processing pending "Applications[s] to Register Permanent Residence or Adjust Status, Form I-485, wishing to depart and re-enter the United States without

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[8] Howard remembered this conversation. She believed that it had occurred earlier than January 2002, but she said that she could be wrong about the date.

abandoning their application." The purpose of the guidance was to ensure consistency in processing such matters, and it outlined parole procedures in such situations. The December 29 memorandum did not address visa waivers and did not have the far-reaching impact of the November 14 memorandum.

Howard stated that she was not familiar with the December 29 memorandum that was faxed to Bittner, and was uncertain if this had been sent to Bittner because there was no confirmation receipt. Howard said that she does not know where the Administrative Assistant would have gotten the memorandum if not from her, or why she would have sent it to Norfolk absent Howard's instructions to do so.

Bittner said that when he received the December 29 memorandum, he gave it to the Norfolk Assistant OIC, who assured Bittner that they already had this memorandum and were in compliance with it. According to Bittner and the Norfolk Assistant OIC, they therefore concluded that there was no policy that they had not received. Thus, they did not seek additional information about the new waiver policy.

B. Responsibility for Norfolk's Failure to Receive or Comply with the November 14 Policy Change

First, we concluded that the Norfolk Supervisory Immigration Inspector who granted the crew list waivers in this case was not responsible for the failure to comply with the November 14 memorandum. She, and other Norfolk Immigration Inspectors, had not been informed of the policy change, and she acted in accordance with the policy that she believed was in effect.

As we describe below, we believe that both Bittner and Howard bear responsibility for Norfolk's failure to receive and apply the new policy.

1. Bittner

Based on our interviews of INS personnel and the documentary evidence, we concluded that the Norfolk Sub-Office did not receive the November 14 policy change. Further, the evidence indicated that Howard did not discuss the November 14 memorandum during any staff meeting. This conclusion is supported by the absence of any mention of a discussion on this topic in anyone's meeting notes. Meeting notes taken by different individuals included small details regarding parking and heating, but nothing about a discussion of the policy change. Given the inclusion of detailed information in their notes, we do not believe that an

important substantive issue such as the policy change made in the November 14 memorandum would have been omitted from all the notes if it had been discussed.

We concluded, however, that Howard may have had a brief side conversation with some staff about the new waiver process. But the substance of that conversation was not conveyed to the Norfolk officers.

Nevertheless, although the policy change was not received by the Norfolk Sub-Office, we believe that Bittner bears some responsibility for failing to obtain the November 14 memorandum containing the policy change once he became aware of it. Through a conversation with Gary Hale, the Officer in Charge of the INS's Albany New York office, Bittner had reason to be aware that a new policy affected Norfolk operations. Bittner stated that the conversation about the policy with Hale was very vague. However, Hale questioned Bittner about how Norfolk was implementing the policy "requiring the District's approval on all waivers." We believe that this conversation should have put Bittner on notice of an important policy change affecting his operations.

The conversation caused Bittner to call Howard to ask for the new policy. The e-mail that Bittner later wrote in March 2002 about the incident indicated that he had discussed the policy with Howard but never received it. Bittner told us that his e-mail meant that he had discussed the policy with Howard by asking her to send a copy, but they had not discussed the substance of the policy. Bittner also stated that the November 14 memorandum never came to Norfolk, and he never had a follow-up conversation about the memorandum with Howard.

We do not believe that Bittner received the November 14 policy and chose not to follow it, as were told some in the INS believed when the incident first occurred. Howard and Lewis both stated that they think highly of Bittner, and Howard stated that there was nothing in Bittner's work history that would indicate a willingness to knowingly disregard an agency policy. Other Headquarters and regional management also noted that Bittner had a good reputation and believe that he ran a good operation in Norfolk.

Yet, while we believe that Bittner did not receive the policy and may not have known the specifics of the new policy, he knew enough that he should have sought additional clarification when he received the fax of the wrong memorandum, the December 2000 memorandum, that did not deal with visa waivers. Hale had specifically told Bittner that the new policy required District Office approval on all waivers, and Hale had explained the process Albany was employing with respect to the November 14 memorandum. The December 2000

memorandum did not address this issue at all and was more than a year old. But Bittner never followed up with Howard or the Washington District office about this issue nor did he determine what Hale meant when he referenced the new policy.

2. Howard

We concluded that the primary fault for Norfolk's violation of the November 14 memorandum policy rests with the District Office – specifically with Deputy District Howard.

We do not find District Director Lewis to be at fault in this matter. The process for granting approvals of waivers, paroles, and deferred inspections, was for the requesting office to contact Howard. Lewis only took calls when Howard was unavailable, which was infrequent. Lewis also had no reason to know that Norfolk had not made any requests between December 2001 and March 2002. Nor did Howard inform Lewis of her conversation with Bittner in December regarding his failure to receive the policy change.

Rather, we believe Howard was responsible for ensuring that Bittner and the Norfolk Sub-Office understood and complied with the new policy on visa waivers. Although Howard claimed that she discussed the policy change in two staff meetings, we concluded that Howard did not read the memorandum or any part of it at a staff meeting. While there may have been a brief discussion of the memorandum between Howard and some staff members, it was not part of the main meeting. Even if it had been mentioned in connection with the meeting, it was not sufficiently highlighted to inform Norfolk of the new policy requirements.[9]

We also concluded that Howard should have known that Norfolk had not requested any waivers since the November policy change. The Snapshot Report that is provided to the Washington District Office on a monthly basis indicated that approximately 800 aliens a month are inspected by Norfolk. Howard acknowledged that she saw these reports. Howard asserted that because there were no requests for waivers from the Norfolk Sub-office, she assumed none were needed. But she never checked with the Norfolk Sub-Office about her assumption

[9] In a response to a draft of this report, Howard reiterated her arguments that she had discussed the November 14 memorandum at a staff meeting and during that meeting Bittner was informed of the change. Based on the evidence and the reasons discussed above, we did not find her arguments persuasive.

or whether it was following the change in policy for granting waivers. Given the volume of inspections performed by Norfolk, we believe that it was not reasonable for her to believe that not a single waiver, deferral, or parole was needed or granted between December 2001 and March 2002. Five district officials responsible for granting waivers in other INS districts who we interviewed stated that they would have been surprised if they had not received any requests for visa waivers from December through March from a moderately busy port, which Norfolk is.

In addition, after Bittner asked Howard about the policy change, Howard sought to have the policy sent to Bittner. However, the wrong memorandum was sent. Howard never followed up with Bittner to determine if Norfolk had received the new policy and was following it, even after Norfolk still made no requests for any waivers. Howard also never made any effort to inquire why there were no waivers from Norfolk. We believe that her inattention to this issue was at least as responsible as Bittner's actions for Norfolk's not receiving or following the new policy guidance.

C. Movement of Bittner

Shortly after the Norfolk ship jumping incident, Bittner was detailed from the Norfolk Sub-Office to the Washington District Office. The decision to move Bittner was made at INS Headquarters by Executive Associate Commissioner Williams. He and other headquarters personnel gathered facts from Bittner's third-level supervisor, Blackman. However, neither Blackman nor Bittner's first- and second-level supervisors, Lewis and Howard, were consulted regarding the decision to take action against Bittner. The INS also decided to move Bittner within two days of learning about the incident. Given this short time frame, there was very little time to gather and evaluate the information about Bittner's responsibility for the incident.

The INS's action in detailing Bittner was different from the way a similar incident was handled in Camden, New Jersey. On March 21, an INS Immigration Inspector in Camden granted a visa waiver for the Turkish captain of a ship without seeking authorization from anyone in the Newark District Office, as required by the November 14 memorandum. The District Director in Newark reported the incident to the Eastern Regional Office on March 25, 2002.

The Eastern Region of the INS requested an inquiry of the Camden incident, to be conducted by a Patrol Agent in Charge from another district office. That inquiry found that the November 14 policy change was not being followed at the Camden post, which operated out of the INS's Cherry Hill, New Jersey, Sub-

Office. The inquiry also developed evidence indicating that the policy change had been discussed in a staff meeting. The OIC of the Cherry Hill Sub-Office claimed that she was unaware of the change in policy, and she had not informed her staff of the change. The conclusion of the INS inquiry was that while the Cherry Hill OIC had made an error, it was neither malicious nor intentional and was the result of "indistinct communication from a variety of levels." Further, the INS did not recommend that any disciplinary action be taken as a result of Camden's failure to comply with the November 14 memorandum. By contrast, in the Norfolk incident, Bittner was immediately moved for his failure to follow the November 14 policy change before any inquiry was conducted.

V. The INS's Dissemination of New Policies

The Norfolk ship jumping incident shines light on a long-standing problem in the INS – that INS policies and changes in policy are not distributed to INS offices and employees in the field in a uniform or effective way. In this section of the report, we first discuss how the November 14 memorandum was disseminated throughout the INS and then discuss what the INS is doing to rectify some of the problems with its current distribution system. At the end of the report, we offer recommendations for improvements in the INS's process for making its employees aware of the policies they should be following.

A. How INS Distributed the November 14 Memorandum

To investigate how the November 14 memorandum was distributed throughout the INS and whether the Norfolk Sub-Office alone did not receive the memorandum, we selected three District Offices – Miami, Houston, and San Diego (one from each INS region) and determined how they received the November 14 memorandum. In addition, we analyzed how the policy was distributed by the Washington District Office. We also investigated how the policy was distributed by the Newark and the Boston District Offices, because we learned that sub-offices within these districts also were not in compliance with the new policy in the November 14 memorandum.

We found that there is no consistency with respect to how policy memoranda get from the INS office of origination to those who are assigned to implement the policies. Policy memoranda are most commonly distributed through the Region to the Districts. However, INS program offices have different methods for sending information to the field. Further, we found that there was no consistent method for tracking the distribution of memoranda or ensuring that they are enforced.

1. Eastern Region

As discussed above, the Eastern Region faxed the November 14 memorandum to District Directors and sent an e-mail to District Directors and Port Directors alerting them to the coming memorandum. This e-mail, however, did not go to OICs in the District. Before the Norfolk incident, the Eastern Region did not have an established process for tracking the distribution or compliance with policies, and once the memorandum left the Regional Office neither receipt nor implementation was confirmed.

We found that all of the District Offices in the Eastern Region that we spoke to – Boston, Newark, Miami, and Washington – had received the November 14 memorandum. Those offices then tried to forward the memoranda to the officials in their districts who needed the information. In the Miami District, we found that the Jacksonville Sub-Office and the Miami Seaport did receive the memorandum. The Miami Seaport took additional steps to ensure compliance with the new policy by issuing standard operating procedures for compliance with the November 14 memorandum.

Some districts within the Eastern Region, however, were not successful at ensuring receipt by sub-offices. We have already discussed in detail the Washington District's unsuccessful process for dissemination of the November 14 memorandum. Newark and Boston were also unsuccessful in conveying the new policy to all offices affected by the change.

In Newark, the District Office faxed the November 14 memorandum to the Newark Airport which at the time was responsible for all inspections in the Newark District except for the port at Camden. It does not appear, however, that the November 14 memorandum ever arrived in the Camden port. As noted above, on March 21, a Camden immigration officer granted a visa waiver without notifying the Newark office. An INS inquiry found that the November 14 policy change was not being followed in Camden and had not been received there. Similarly, although the Boston District Office purportedly faxed the document to its sub-offices, we found that the Providence Sub-Office never received the November 14 policy change.

2. Western Region

The Western Regional Office faxed the November 14 memorandum to District Offices. Our review in the San Diego District Office found that it had

received the memorandum and that it implemented many measures to ensure that the new policy was received and followed by all Immigration Inspectors.

The San Diego District Office received the memorandum by fax from the Western Regional Office on December 4, 2001. According to the San Diego District Office, memoranda such as the November 14 memorandum are stamped for distribution and forwarded to the Port Directors and the appropriate program offices, which are then responsible for implementation. In addition to faxing the November 14 memorandum to all ports of entry, the Assistant District Director for Inspections for the San Diego District visited the San Ysidro Port regarding the implementation of the policy. This port averaged between 3,000 and 4,000 waiver requests a month, and therefore implementation of the new policy was a significant issue for the San Ysidro Port. All Supervisory Immigration Inspectors in the San Ysidro Port were given a copy of the November 14 memorandum in their mailbox, via e-mail, and at meetings. Further, the San Ysidro Port sent instructions for complying with the policy change by e-mail to its staff. Moreover, the San Ysidro Port established a separate unit for ensuring that the new policy was followed.

3. Central Region

Unlike the Western and Eastern Regions, the Central Region took specific steps to ensure that all offices in the region received and complied with the November 14 memorandum. The Central Region sent the policy to District Directors with a cover memorandum explaining the policy and requiring each district to send the regional office a report within the week explaining its procedure for implementing the policy.

Within the Central Region, we went to the Houston District Office and found that it also took steps to ensure that the policy was followed by Immigration Inspectors. Following receipt of the November 14 memorandum, Houston's Acting Assistant Port Director had notices posted regarding the policy change in the seaports under Houston's jurisdiction, including Galveston, Port Arthur, and Houston. In addition, the Houston District sent a memorandum to all Assistant Port Directors and Supervisory Immigration Inspectors informing them of the new policy, with instructions regarding implementation.[10]

[10] As of April 2002, the Houston District discontinued granting any waivers, according to the Houston Assistant District Director for Inspections.

B. Local Changes in Dissemination Processes

Since the Norfolk incident, some offices have attempted to make changes to ensure that INS employees who must implement policies receive and comply with them. For example, before the Norfolk incident, the Eastern Region did not have a process for tracking the distribution of, or compliance with, new policies. Since March 20, 2002, however, the Eastern Regional office and several district offices, including the Boston District and the Washington District, have begun tracking memoranda that they send to ensure their receipt. Further, the Eastern Region Planning Office now retains copies of all distributed memoranda, and requires that each office that is sent a copy of a memorandum return a cover sheet from the received memorandum acknowledging receipt.

In addition, some offices maintain a list of all received and issued memoranda. The lists include items such as the name of the affected programs, the date the memorandum was sent, and a brief description of the memorandum.

In addition to keeping a list of memoranda, the Washington District now scans memoranda into the computer and forwards them to the appropriate offices and individuals by e-mail rather than by fax or mail as was previously the practice. By using this method, the Washington District is able to track who is sent memoranda through the e-mail archive folder and who receives them through return receipt.

Another means of ensuring receipt and compliance has been implemented in the Miami Seaport. That port-of-entry now issues each Immigration Inspector a binder containing directives. The Inspectors are required to sign new policy directives indicating they have read and understand them.

C. Headquarters Practices

All of the efforts to ensure receipt and compliance with INS policies described above were implemented by local or district offices, but were not national in scope. The INS has no national policy addressing the lack of uniformity in distribution and implementation of policies and guidance, despite notice of the problem.

In February 2000, the INS Office of Internal Audit (OIA) drafted a report on policy dissemination. The OIA report stated that the INS did not "have a sound infrastructure through which offices can maintain guidance distributed to the field." Further, the report found that there was no formal means of conveying information beyond memoranda, and no formal requirements for incorporating

memoranda into manuals or everyday operations. The report made three recommendations:

1) The Executive Associate Commissioner, Policy and Planning, in coordination with the Executive Associate Commissioner, Management, should require that program offices incorporate policies and related procedures into Field and Administrative Manuals;

2) The Executive Associate Commissioner, Policy and Planning, should establish a process for issuing and controlling interim guidance;

3) The Executive Associate Commissioner, Policy and Planning, in coordination with the Executive Associate Commissioner, Management, should establish guidance for policy and procedure distribution and follow-up.

When we asked OIA during our investigation whether any action had been taken on the recommendations in this report, an OIA program manager said that OIA would look into it. On May 23, 2002, OIA asked the INS Executive Associate Commissioner for Policy and Planning for the status of the actions taken in response to three recommendations made in the OIA report. A reply to OIA's request was asked for by June 14, 2002. No reply, however, was made.

After the deadline for a response passed, we again contacted OIA to find out what the INS had done, or was planning to do, regarding the recommendations. The OIA Assistant Director for Internal Audit responded that the report had been drafted at the request of former INS Commissioner Doris Meissner. The Assistant Director further told the OIG that the completed report was sent to Commissioner Meissner for comment, but she did not respond before leaving her position. Therefore, although the report had been sent to the relevant implementing programs, it was never acted upon.

We also spoke to an official in the INS's Office of Policy and Planning to inquire about its implementation of the three recommendations. He informed us that the Office of Policy and Planning no longer had organizational responsibility for the matters covered in the OIA's February 2000 report, and that these matters now were more appropriately addressed by the Office of Field Operations, which has responsibility for policy directives and guidance, and to the Office of Management, which is responsible for administrative directives and guidance. However, no one currently involved with addressing policy dissemination in the

Office of Field Operations who was interviewed for this report was aware of the OIA report prior to meeting with the OIG.

Executive Associate Commissioner Williams stated, however, that the INS had created a working group, the Field Manual Project, to address the issues raised in the OIA report. Williams said that, shortly after assuming his current position in March 2002, he created the Field Manual Project working group to improve and facilitate the use of the field manuals, as well as to improve the dissemination of policies within the INS. Williams said this group intended to consider the value of using products such as Docushare to enable users to scan documents into a computer for shared use. In addition, the working group was seeking ways to ensure that the field manuals are kept current, and to eliminate conflicting guidance within the field manuals.

We determined that the INS five field manuals can now be found on the INS's document system called INSERTS (Immigration and Naturalization Service Easy Research & Transmittal System), which is in both CD form and on the INS's intranet. We were told that updates to the CDs are made approximately every five months, while changes to the INS Intranet are made every two to four weeks.

Assistant Commissioner for Inspections Cronin, who is a member of the Field Manual Working Group, explained that part of the project includes making the field manuals the sole source of INS policies. He acknowledged, however, that many of the field manuals are incomplete. We also found that the field manuals that were purported to be complete were not. For example, Cronin told us that he believed the Inspections field manual was complete. Yet upon our review, we found that the changes mandated by the November 14 memorandum were still not reflected in the May 2002 version of INSERTS.

We asked Mike Shaul, an Examinations Officer in the Office of Programs and the Acting Director of the Field Manual Project, about the incomplete field manuals. Shaul stated that the process for updating the manuals is outlined in the INS Administrative Manual Procedures. That section explains how programs are to revise the field manuals. It states that when a program is contemplating issuing a change in policy or guidance it should request a transmittal number from the Field Manual Project Unit. When the policy or guidance is issued, it should be sent to the Policy Directives and Instructions Branch, and the Field Manual Project Office. These offices are supposed to ensure that the submission is consistent with the format necessary for the update to be made in the Field Manual and, upon satisfaction, sends it to a contractor for inclusion in the Field Manual.

Shaul provided the OIG with a copy of the Inspector's Field Manual Update Log. This document provides the number assigned to a memorandum, the topic, the individual assigned the task, the date the number was assigned to the memorandum, and the date the document was sent to the INSERTS contractor. When we reviewed the log on July 11, 2002, it showed that the policy in the November 14 memorandum had not been completed yet, meaning it had not been added to the Field Manual.

Shaul told the OIG that he believed that policy distribution and the field manuals should be interrelated. The Field Manual Project Unit would prefer INS offices write memoranda that can serve as both the policy/guidance and the Field Manual update. Shaul explained that it is easier to make policy changes using the original Field Manual section affected by the change and draft the changes with the Field Manual in mind. He said that the Field Manual Working Group is also considering implementing a process by which policies and guidance are scanned into the computer, thus providing immediate access to all issued material.

The Field Manual Project has created a document outlining its proposals and recommendations that the INS:

- Prepare overdue field manual updates
- Re-emphasize to officers and supervisors the need to prepare memos to the field in field manual format
- Incorporate standard operating procedures developed by Immigration Services Division and other offices into the field manuals
- Prepare all guidance memos in field manual format
- Arrange for immediate dissemination of memos when urgent (possibly via cables to field offices)
- Update INSERTS immediately
- Immediately notify field offices of INSERTS updates (possibly using e-mail broadcast message)

We agree that these actions would greatly improve the INS's system for transmitting information. In addition, on August 13, 2002, the working group proposed further recommendations to improve policy distribution within the Office of Field Operations. These recommendations include a better and more complete use of electronic means of distribution. Moreover, Williams issued a

memorandum on August 19, 2002, directing that all memoranda directed to field personnel must be drafted to incorporate Field Manual additions or changes. The directive further stated that each such memoranda must be cleared through the Director or Acting Director of the Field Manual Project to ensure that the memoranda does not conflict with current policy and is in the proper format.

However, given the current time lag for updating the Field Manual and because a shared electronic process has not been implemented yet, it is still necessary for the INS to send policy and guidance changes to the field. Until the recommendations of the Field Manual Project can be fully implemented throughout the INS, we believe that the INS should use electronic means for disseminating and tracking receipt of memoranda, including e-mailing policy changes rather than by faxing them, as was done in this case. We also believe that the INS should make documents available on a shared electronic bulletin board for all employees, rather than relying on mailing and faxing documents.[11]

In addition, we believe it is important for the INS to routinely send policy memoranda to OICs as well as to Port Directors and Program Managers. By failing to include OICs in the initial distribution of policies, the INS misses a critical link to the field, which caused the breakdown in the Norfolk case.[12]

We also believe that the INS must ensure that all employees are trained to access INSERTS as well as other electronic mediums used by INS. This also is suggested in the August 13 recommendations proposed by the working group. One District Director told us that INSERTS is not used regularly by INS employees, and if a question arises about a policy his office likely would call the region. Updating INSERTS and ensuring access is meaningful only if employees use it. If

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[11] In response to a draft of this report, the INS stated that it concurs with this recommendation and is in the process of setting up a process by which electronic versions of policy memorandum will be transmitted to field offices, with logs kept of receipt of policies by the field office and actions taken in response.

[12] The INS disagreed with this recommendation, stating that it intends to require all District Directors to set up internal policy distribution standard operating procedures. We are concerned that decentralizing the distribution of policy memoranda will lead to inconsistencies and similar problems that occurred here, and that a more centralized process distributing policy memoranda from INS Headquarters to the field, including OICs and Port Directors, would be more effective and efficient.

the INS relies upon INSERTS to notify its employees of policy changes, INS employees should be trained on INSERTS and required to use it.

Finally, we recommend that the INS also post important policies and policy changes in prominent locations in INS offices, where employees have access to them. Therefore, even if an electronic communication is missed, the employee will have another opportunity to be informed of the critical policy changes.[13]

VI. Conclusions

This report examined the March 2002 ship jumping incident in Norfolk and the reasons for the Norfolk INS's failure to follow the INS November 14 memorandum that required visa waivers to be approved by District officials. We found that Norfolk did not receive the new policy. We attributed this failure primarily to inaction by the Washington Deputy District Director and to a smaller extent by the Norfolk Officer in Charge.

We also concluded that the INS needs a more effective system for distributing new policies. The INS has been on notice of problems with inconsistent distribution of policies since at least February 2000, when the INS OIA issued a report recommending changes in this area. Two years later, the INS had not implemented these changes. It now has an ongoing project to try to ensure that all policies and guidance are available to the field in complete Field Manuals, but that project is ongoing still. We believe this is a critical initiative that should receive priority attention. In addition, we recommend that the INS take additional steps to ensure that policy memoranda arrive where they are intended and are followed. In this regard, we believe the INS should make better use of e-mail, electronic bulletin boards, and other electronic means to transmit new policies to the INS employees who must enforce them.

Glenn A. Fine

Inspector General

[13] The INS stated in response that it would review and take into consideration this recommendation.

EXHIBIT A

U.S. **Department** of Justice
Immigration and Naturalization Service

HQINS 70/10.10

Office of Executive Associate Commissioner

425 *J Street NW*
Washington. DC 20536

NOV 2 8 2001

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
OFFICER DEVELOPMENT AND TRAINING FACILITY, GLYNCO

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Deferred Inspection. Parole and Waivers of Documentary Requirements

Attached is the policy memorandum establishing field guidance for authorizing the deferred inspection, parole, or waiver of any documentary requirement at the ports-of-entry (POEs). Aliens shall not be paroled for deferred inspection, otherwise paroled into the United States. or granted a waiver of any documentary requirement without the express approval of the District Director, Deputy District Director, Assistant District Director for Inspections. or Assistant District Director for Examinations. In addition, all Forms 1-512, Authorization for Parole of an Alien into the United States, issued overseas must be approved by the District Director or Deputy District Director. This authority shall not be delegated. Please ensure that all districts and POEs are aware of and comply with this policy.

Attachment

U.S. Department of Justice
Immigration and Naturalization Service

HQINS 70/10.10

Office of the Executive Associate Commissioner

425 I Street NW
Washington. DC *20536*

NOV 14 2001

MEMORANDUM FOR MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

SUBJECT: Deferred Inspection. Parole and Waivers of Documentary Requirements

During the Nation's heightened security alert and until further notice, aliens shall not be paroled for deferred inspection, otherwise paroled into the United States, or be granted a waiver of any documentary requirement without the express approval of the District Director, Deputy District Director, Assistant District Director for Inspections, or Assistant District Director for Examinations.

District Directors, Deputy District Directors, Assistant District Directors for Inspections, and Assistant District Directors for Examinations shall only parole for deferred inspections, otherwise parole into the United States, or grant a waiver of any documentary requirement on a case-by-case basis after all appropriate database checks have been completed. Such discretion should be applied only in cases where inadmissibility is technical in nature (i.e., documentary or paperwork deficiencies), or where the national interest, law enforcement interests, or compelling humanitarian circumstances require the subject's entry into the United States, and where the alien is likely to comply with the terms of the exercise of discretion.

This authority shall not be delegated. This guidance does not change the existing statutory and regulatory standards for paroles and documentary waivers.

Further, all Authorizations for Parole of an Alien into the United States (Form 1-512) issued by overseas Immigration and Naturalization Service (INS) offices must be approved by the District Director or Deputy District Director. Authorizations for Parole of an Alien into the United States (Forms 1-512 and I-5I2L) issued at stateside INS district offices or service centers

need not have the express approval of the District Director, Deputy District Director, or Service Center Director.

Officers at ports-of-entry (POEs) must obtain the approval of the District Director, Deputy District Director, Assistant District Director for Inspections, or Assistant District Director for Examinations when granting waivers of documentary requirements for nonimmigrants under section 212(d)(4) of the Immigration and Nationality Act (INA) and for returning residents not in possession of proper documents pursuant to section 211 (b) of the INA. Pursuant to the attached October 3,2001, memorandum, "Interim Guidance: Status of FY 2002 Refugee Admissions," refugee applicants who arrive at a port-of-entry may be granted a 3D-day deferred inspection. Officers must obtain the approval of the District Director, Deputy District Director, Assistant District Director for Inspections, or Assistant District Director for Examinations prior to deferring the inspection of refugee applicants.

While Officers need not obtain the approval of the District Director, Deputy District Director, Assistant District Director for Inspections, or Assistant District Director for Examinations *to* parole aliens in possession of a valid Form 1-512 or I-512L, such as adjustment of status applicants or certain alien applicants under the Legal Immigration Family Equity (LIFE) Act, such aliens are still subject to the INS inspection process. Attached is a copy of the October 26, 2001, memorandum addressing the issue of aliens presenting Form I-512L at the POE.

This memo does not change the procedures for Border Crossing Card holders contained in the September 28,2001 Memorandum entitled "Expiration of Non-Biometric Border Crossing Cards (BCCs) and Implementation of the Machine-Readable Biometric BCC on October I, 2001." A copy of this memorandum is also attached.

The point of contact in the Office of Inspections is Assistant Chief Inspector Cheryl Becker (202) 305-4764.

Attachments (3)

EXHIBIT B

INS
c-PMs

U.S. Department of Justice
Immigration and Natura1ization Service

Policy Transmittal #100

HQINS 70/12.2.1

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

SEP 30 2002

MEMORANDUM FOR REGIONAL DIRECTORS
DIRECTOR, INTERNATIONAL AFFAIRS

FROM: John N. Williams [signed]
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Nonimmigrant Unforeseen Emergency Waivers Under Section 212(d)(4)(A) of the Immigrant and Nationality Act – IFM Update IN02-29

This memorandum provides amendatory language to the Inspector's Field Manual (IFM) and reminds immigration officers of the strict limitations placed upon unforeseen emergency waiver requests under section 212(d)(4)(A) of the Immigration and Nationality Act (Act). This memorandum supersedes the November 14, 2001, memorandum Deferred Inspection, Parole and Waivers of Documentary Requirements to the extent that it conflicts with the granting of 212(d)(4)(A) waivers. Effective immediately, this policy authorizes port directors and officers-in-charge (including an individual acting in either capacity) to adjudicate section 212(d)(4)(A) waivers under limited circumstances. These changes will be included in the next release of INSERTS. If you require any clarification regarding this memorandum, please contact Assistant Chief Inspector Marty Newingham at (202) 616-7992.

1. Section (d) of Chapter 17.5 of the IFM is revised to read in total as follows:

"(d) Nonimmigrants.

(1) Section 212(d)(3)(A). Nonimmigrants who are inadmissible to the United States, and who require a visa, must apply in advance for a waiver under section 212(d)(3)(A) of the Act. Joint concurrence by the Secretary of State and the Attorney General is required for approval. The alien usually applies for the waiver in conjunction with the application for a nonimmigrant visa. Once approved, the section of law under which the waiver was approved and any special limitations will be noted on the visa. If otherwise admissible, enter the waiver information and any restrictions on the reverse side of the I-94 in the appropriate blocks.

(2) Section 212(d)(3)(B). Inadmissible nonimmigrants who are already in possession of a nonimmigrant v1sa, or who are exempt the requirement for a visa, must apply for a waiver under section 212(d)(3)(B) to the district director having jurisdiction over the intended port-of- entry. Application is made on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. Adjudication procedures are discussed in detail in the Adjudicator's Field Manual Chapter 52. If approved, the alien will be in possession of Form I-194, Notice of Approval of Advance Permission to Enter as a Nonimmigrant, or the approval may be noted on the alien's border crossing card. If otherwise admissible, enter the waiver information, the file number, and the FCO code on the reverse side of the Form I-94, along with any conditions or restrictions.

(3) Section 212(d)(4)(A) Waiver of Passport and/or Visa. (i) A district director has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an unforeseen emergency prevented him or her from acquiring the appropriate passport or visa. See generally Matter of LeFloch, 13 I. & N. Dec. 251, 255-56 (BIA 1969) (212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); Matter of V, 8I & N. Dec. 485.485- 87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). The term "unforeseen emergency" as used in 8 CFR 212.1(g) means:

an alien arriving for a medical emergency;

- an emergency or rescue worker arriving in response to a community disaster or catastrophe in the United States;
- an alien accompanying or following to join a person arriving for a medical emergency;
- an alien arriving to visit a spouse, child, parent, or sibling who within the past 5 days has unexpectedly become critically ill or who within the past 5 days has died; or an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

(ii) In a case where a section 212(d)(4)(A) waiver is under consideration (only in those cases identified above), the alien should complete Form I-193 and remit the appropriate fee. In the remarks block of the Form I-193, the immigration officer shall describe the unforeseen emergency that prevented the alien from obtaining the proper documentation. The authorizing official shall precisely describe the emergency that prevented the alien from acquiring the required documents before arriving in the United States. In addition, the authorizing official shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Mark "o/a" in the block designated for Department of State concurrence on the Form 1-193. Where a port director or an officer-in-charge favorably adjudicates an application for a section 212(d)(4)(A) waiver, the

admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission