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INS Adopts Strict Policy Regarding Waivers of Entry Documents

In the past, INS admitted some foreign citizens to the U.S. who applied for admission at a border or pre-flight inspection station without first obtaining a proper passport or visa. In certain sympathetic cases, the INS would request an Application for Waiver (form I-193) and payment of a waiver fee. The INS recently issued a memorandum restricting such waivers.

Under the new policy, anyone seeking a waiver must establish that an "unforeseen emergency" prevented him or her from acquiring the passport or visa. The term "unforeseen emergency" includes at least five situations:

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

If there is an "unforeseen emergency" which does not fit one of the five situations listed, then the waiver may only be granted by a senior INS official in the port district, and, by implication, it should be as severe and as unforeseen as the five enumerated situations.

It is important to understand that some U.S. visas may be issued even when there is a basis for excluding the person, if a waiver of the ground of inadmissibility has been granted. For example, a waiver of certain criminal grounds of exclusion may be granted when a visa is issued, provided that the person first discloses the crime and applies for a waiver. The visa would indicate that a waiver had been granted.

On the other hand, if a person obtains a visa and then commits a crime and subsequently applies for admission to the U.S., no waiver will be granted at the border if the INS, using its new database, discovers the offense.