

Form I-213 Outline

A. Presumption of Reliability

1 Form I-213 can be authenticated by any recognized procedure. See *Iran v. INS*, 656 F.2d 469, 472 (9th Cir. 1981).

Absent any evidence that a Form I-213 contains information that is incorrect or was obtained by coercion or duress, it is inherently trustworthy and admissible as evidence to prove alienage or deportability. *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988).

B. Incorrect Information or Coercion/Duress - the Commonly Raised Problems

1. Source problems - If the source of the information on an I-213 is neither the government nor the subject of the report, it cannot be presumed true. See *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995).

- Sources with ulterior motives; e.g., government informant. *Murphy v. INS*, 54 F.3d 605, 610 (9th Cir. 1995)
- Sources that do not merit evidentiary weight; e.g. a statement that had been withdrawn from the record. *Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 680 (9th Cir. 2005).

2. Special source problems with juveniles - identify if the source is the juvenile respondent or an accompanying adult.

- There may be a problem if the source is not identifiable. See *Matter of Rosa Mejia-Andino*, 23 I&N Dec. 533 (BIA 2002) (Espinoza, concurring).
- If it is a child, determine whether this creates a reliability problem (may depend on age of child). See *Matter of Ponce-Hernandez*, 22 I&N Dec. 784 (BIA 1999).
- If it is an accompanying adult, then generally no juvenile-related source problem. See *Matter of Gomez-Gomez*, 23 I&N Dec. 522 (BIA 2002).

3. Problems with the form or accusations by the respondent of false information - determine if the problem cited to is material and if any probative evidence has been submitted contradicting something on the form. See *Espinoza v. INS*, 45 F.3d 308 (9th Cir. 1995); see also *Murphy v. INS*, 54 F.3d 605, 610-11 (9th Cir. 1995).

4. Cross examination problems - There is no an automatic right to cross-examine the preparer of an I-213. *Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995). But if the respondent raises significant problems with the form, cross-examination (or other verification of some sort) may be necessary. See *Espinoza v. INS*, 45 F.3d 308 (9th Cir. 1995); see also *Murphy v. INS*, 54 F.3d 605, 610-11 (9th Cir. 1995).

5. Coercion/duress - no cases were found where the respondent alleged coercion or duress but this remains a possibility.

C. Decide What Weight, if any, to Assign

1. If the respondent does not appear or does not testify - the Form I-213 is given full evidentiary weight because the respondent has waived any opposition to it. See *Matter*

of Ponce-Hernandez, 22 I&N Dec. 784, 785-86 (BIA 1999); see also *Matter of Barcnas*, 19 I&N Dec. 609 (BIA 1988).

2. If the respondent does appear and raises issues -

- If no evidence that the I-213 contains information that is incorrect or was obtained by coercion or duress » give full weight.
- If some evidence » determine if the evidence is sufficient to justify giving the I-213 limited or no weight.