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passport) issued by the DOS, shall be voided and physically cancelled. The alien to whom the card or stamp was issued by the DOS shall be notified of the action taken and the reasons for such action by means of Form I–275, Withdrawal of Application for Admission/Consular Notification, delivered in person or by mailing the Form I–275 to the last known address. The DOS shall be notified of the cancellation of the biometric Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by DOS, by means of a copy of the original Form I–275. Nothing in this paragraph limits the Service's ability to remove an alien pursuant to 8 CFR part 235 where applicable.

(2) *Within the United States.* In accordance with former section 242 of the Act (before amended by section 306 of the IIRIRA of 1996, Div. C, Public Law 104–208, 110 Stat. 3009 (Sept. 30, 1996,) or current sections 235(b), 238, and 240 of the Act, if the holder of a Form DSP–150, or other combined B–1/B–2 visa and BCC, or (similar stamp in a passport) issued by the DOS, is placed under removal proceedings, no action to cancel the card or stamp shall be taken pending the outcome of the hearing. If the alien is ordered removed or granted voluntary departure, the card or stamp shall be physically cancelled and voided by an immigration officer. In the case of an alien holder of a BCC who is granted voluntary departure without a hearing, the card shall be declared void and physically cancelled by an immigration officer who is authorized to issue a Notice to Appear or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I–185, I–186 or I–586 issued by the Service and which are now invalid, or a Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC, or (similar stamp in a passport) issued by the DOS may be declared void by United States consular officers or United States immigration officers in Mexico or Canada.

(4) *Grounds.* Grounds for voidance of a Form I–185, I–186, I–586, a DOS-issued non-biometric BCC, or the biometric Form DSP–150 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; that he/she has abandoned his/her residence in the country upon which the card was granted; or if the BCC is presented for admission on or after October 1, 2002, it does not contain a machine-readable biometric identifier corresponding to the bearer and is invalid on or after October 1, 2002.

(e) *Replacement.* If a valid Border Crossing Card (Forms I–185, I–186, or I–586) previously issued by the Service, a non-biometric border crossing card issued by the DOS before April 1998, or a Form DSP–150 issued by the DOS has been lost, stolen, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in the DOS regulations found at 22 CFR 41.32 and 22 CFR 41.103.

[67 FR 71448, Dec. 2, 2002]

§ 212.7 Waiver of certain grounds of inadmissibility.

(a) *Filing and adjudication of waivers under sections 212(g), (h), or (i) of the Act.* (1) *Application procedures.* Any alien who is inadmissible under sections 212(g), (h), or (i) of the Act who is eligible for a waiver of such inadmissibility may file on the form designated by USCIS, with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. When filed at the consular section of an embassy or consulate, the Department of State will forward the application to USCIS for a decision after the consular official concludes that the alien is otherwise admissible.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* USCIS will provide a written decision and, if denied, advise

the applicant of appeal procedures in accordance with 8 CFR 103.3.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in deportation proceedings or removable in removal proceedings based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

(b) *Section 212(g) waivers for certain medical conditions.* (1) *Application.* Any alien who is inadmissible under section 212(a)(1)(A)(i), (ii), or (iii) of the Act and who is eligible for a waiver under section 212(g) of the Act may file an application as described in paragraph (a)(1) of this section. The family member specified in section 212(g) of the Act may file the waiver application for the applicant if the applicant is incompetent to file the waiver personally.

(2) *Section 212(a) (1) or (3) (certain mental conditions)*—(i) *Arrangements for submission of medical report.* If the alien is excludable under section 212(a)(1)(A)(iii) of the Act he or his sponsoring family member shall submit a waiver request with a statement that arrangements have been made for the submission to that office of a medical report. The medical report shall contain a complete medical history of the alien, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the current physical condition of the alien, including reports of chest X-ray examination and of serologic test for syphilis if the alien is 15 years of age or over, and other pertinent diagnostic tests; and findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery.

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or Service office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services,

Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(*1*) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(*2*) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physcian or specialist during the initial evaluation.

(3) *Assurances: Bonds.* In all cases under paragraph (b) of this section the alien or his or her sponsoring family member shall also submit an assurance that the alien will comply with any special travel requirements as may be specified by the U.S. Public Health Service and that, upon the admission of the alien into the United States, he or she will proceed directly to the facility or specialist specified for the initial evaluation, and will submit to such further examinations or treatment as may be required, whether in an outpatient, inpatient, or other status. The alien, his or her sponsoring family member, or other responsible person shall provide such assurances or bond as may be required to assure that the necessary expenses of the alien will be met and that he or she will not become a public charge. For procedures relating to cancellation or breaching of bonds, see part 103 of this chapter.

(c) *Section 212(e).* (1) An alien who was admitted to the United States as an exchange visitor, or who acquired that status after admission, is subject to the foreign residence requirement of section 212(e) of the Act if his or her participation in an exchange program was financed in whole or in part, directly or indirectly, by a United States government agency or by the government of the country of his or her nationality or last foreign residence.

(2) An alien is also subject to the foreign residence requirement of section 212(e) of the Act if at the time of admission to the United States as an exchange visitor or at the time of acquisition of exchange visitor status after admission to the United States, the alien was a national or lawful permanent resident of a country which the Director of the United States Information Agency had designated, through public notice in the FEDERAL REGISTER, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was to engage in his or her exchange visitor program.

(3) An alien is also subject to the foreign residence requirement of section 212(e) of the Act if he or she was admitted to the United States as an exchange visitor on or after January 10, 1977 to receive graduate medical education or training, or following admission, acquired such status on or after that date for that purpose. However, an exchange visitor already participating in an exchange program of graduate medical education or training as of January 9, 1977 who was not then subject to the foreign residence requirement of section 212(e) and who proceeds or has proceeded abroad temporarily and is returning to the United States to participate in the same program, continues to be exempt from the foreign residence requirement.

(4) A spouse or child admitted to the United States or accorded status under section 101(a)(15)(J) of the Act to accompany or follow to join an exchange visitor who is subject to the foreign residence requirement of section 212(e) of the Act is also subject to that requirement.

(5) An alien who is subject to the foreign residence requirement and who believes that compliance therewith would impose exceptional hardship upon his/her spouse or child who is a citizen of the United States or a lawful permanent resident alien, or that he or she cannot return to the country of his or her nationality or last residence because he or she will be subject to persecution on account of race, religion, or political opinion, may apply for a waiver on the form designated by USCIS. The alien's spouse and minor children, if also subject to the foreign residence requirement, may be included in the application, provided the spouse has not been a participant in an exchange program.

(6) Each application based upon a claim to exceptional hardship must be

accompanied by the certificate of marriage between the applicant and his or her spouse and proof of legal termination of all previous marriages of the applicant and spouse; the birth certificate of any child who is a United States citizen or lawful permanent resident alien, if the application is based upon a claim of exceptional hardship to a child, and evidence of the United States citizenship of the applicant's spouse or child, when the application is based upon a claim of exceptional hardship to a spouse or child who is a citizen of the United States.

(7) Evidence of United States citizenship and of status as a lawful permanent resident shall be in the form provided in part 204 of this chapter. An application based upon exceptional hardship shall be supported by a statement, dated and signed by the applicant, giving a detailed explanation of the basis for his or her belief that his or her compliance with the foreign residence requirement of section 212(e) of the Act, as amended, would impose exceptional hardship upon his or her spouse or child who is a citizen of the United States or a lawful permanent resident thereof. The statement shall include all pertinent information concerning the incomes and savings of the applicant and spouse. If exceptional hardship is claimed upon medical grounds, the applicant shall submit a medical certificate from a qualified physician setting forth in terms understandable to a layman the nature and effect of the illness and prognosis as to the period of time the spouse or child will require care or treatment.

(8) An application based upon the applicant's belief that he or she cannot return to the country of his or her nationality or last residence because the applicant would be subject to persecution on account of race, religion, or political opinion, must be supported by a statement, dated and signed by the applicant, setting forth in detail why the applicant believes he or she would be subject to persecution.

(9) *Waivers under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent).* In accordance with section 220 of Pub. L. 103–416, an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired status under section 101(a)(15)(J) of the Act after admission to the United States, to participate in an exchange program of graduate medical education or training (as of January 9, 1977), may apply for a waiver of the 2-year home country residence and physical presence requirement (the ''2-year requirement'') under section 212(e)(iii) of the Act based on a request by a State Department of Pubic Health, or its equivalent. To initiate the application for a waiver under Pub. L. 103–416, the Department of Public Health, or its equivalent, or the State in which the foreign medical graduate seeks to practice medicine, must request the Director of USIA to recommend a waiver to the Service. The waiver may be granted only if the Director of USIA provides the Service with a favorable waiver recommendation. Only the Service, however, may grant or deny the waiver application. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(l) of the Act (as redesignated by section 671(a)(3)(A) of Pub. L. 104–208). Although the alien is not required to submit a separate waiver application to the Service, the burden rests on the alien to establish eligibility for the waiver. If the Service approves a waiver request made under Pub. L. 103–416, the foreign medical graduate (and accompanying dependents) may apply for change of nonimmigrant status, from J–1 to H–1B and, in the case of dependents of such a foreign medical graduate, from J–2 to H–4. Aliens receiving waivers under section 220 of Pub. L. 103–416 are subject, in all cases, to the provisions of section 214(g)(1)(A) of the Act.

(i) *Eligiblity criteria.* J–1 foreign medical graduates (with accompanying J–2 dependents) are eligible to apply for a waiver of the 2-year requirement under Pub. L. 103–416 based on a request by a State Department of Public Health (or its equivalent) if:

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 2002, to pursue graduate medical education or training in the United States.

(B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (''HHS-designated shortage area'');

(C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. The health care facility named in the waiver application may be operated by:

(*1*) An agency of the Government of the United States or of the State in which it is located; or

(*2*) A charitable, educational, or other not-for-profit organization; or

(*3*) Private medical practitioners.

(D) The Department of Public Health, or its equivalent, in the State where the health care facility is located has requested the Director, USIA, to recommend the waiver, and the Director, USIA, submits a favorable waiver recommendation to the Service; and

(E) Approval of the waiver will not cause the number of waivers granted pursuant to Pub. L. 103–416 and this section to foreign medical graduates who will practice medicine in the same state to exceed 20 during the current fiscal year.

(ii) *Decision on waivers under Pub. L. 103–416 and notification to the alien*—(A) *Approval.* If the Director of USIA submits a favorable waiver recommendation on behalf of a foreign medical graduate pursuant to Pub. L. 103–416, and the Service grants the waiver, the alien shall be notified of the approval on Form I–797 (or I–797A or I–797B, as appropriate). The approval notice shall clearly state the terms and conditions imposed on the waiver, and the Service's records shall be noted accordingly.

(B) *Denial.* If the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416 and the Service denies the waiver, the alien shall be notified of the decision and of the right to appeal under 8 CFR part 103. However, no appeal shall lie where the basis for denial is that the number of waivers granted to the State in which the foreign medical graduate will be employed would exceed 20 for that fiscal year.

(iii) *Conditions.* The foreign medical graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days of receipt of the waiver under Pub. L. 103–416. The foreign medical graduate may only fulfill the requisite 3-year employment contract as an H–1B nonimmigrant. A foreign medical graduate who receives a waiver under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent), and changes his or her nonimmigrant classification from J–1 to H–1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS-designated shortage area named in the waiver application.

(iv) *Failure to fulfill the three-year employment contract due to extenuating circumstances.* A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver under section 214(l) of the Act and this paragraph will once again become subject to the 2-year requirement under section 212(e) of the Act.

Under section 214(l)(1)(B) of the Act, however, the Service, in the exercise of discretion, may excuse early termination of the foreign medical graduate's 3-year period of employment with the health care facility named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health care facility or hardship to the alien. In determining whether to excuse such early termination of employment, the Service shall base its decision on the specific facts of each case. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the foreign medical graduate. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination

of employment. Under no circumstances will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in an HHS-designated shortage area.

(v) *Required evidence.* A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit documentary evidence establishing such a claim. In all cases, the foreign medical graduate shall submit an employment contract with another health care facility located in an HHS-designated shortage area for the balance of the required 3-year period of employment. A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control. A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

(vi) *Notification requirements.* A J–1 foreign medical graduate who has been granted a waiver of the 2-year requirement pursuant to Pub. L. 103–416, is required to comply with the terms and conditions specified in section 214(l) of the Act and the implementing regulations in this section. If the foreign medical graduate subsequently applies for and receives H–1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying USCIS of any material change in the terms and conditions of the H–1B employment, by filing either an amended or a new H–1B petition, as required, under §§ 214.2(h)(2)(i)(D), 214.2(h)(2)(i)(E), and 214.2(h)(11) of this chapter.

(A) *Amended H–1B petitions.* The health care facility named in the waiver application and H–1B petition shall file an amended H–1B petition, as required under § 214.2(h)(2)(i)(E) of this chapter, if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application filed under Pub. L. 103–416 and in the subsequent H–1B petition. In such a case, an amended H–1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

(B) *New H–1B petitions.* A health care facility seeking to employ a foreign medical graduate who has been granted a waiver under Pub. L. 103–416 (prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H–1B petition), shall file a new H–1B petition, as required under §§ 214.2(h)(2)(i) (D) and (E) of this chapter. Although a new waiver application need not be filed, the new H–1B petition shall be accompanied by the documentary evidence generally required under § 214.2(h) of this chapter, and the following additional documents:

(*1*) A copy of the USCIS approval notice relating to the waiver and nonimmigrant H status granted under Pub. L. 103–416;

(*2*) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;

(*3*) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H–1B petition for the balance of the required 3-year period; and

(*4*) Evidence that the geographic area or areas of intended employment indicated in the new H–1B petition are in HHS-designated shortage areas.

(C) *Review of amended and new H–1B petitions for foreign medical graduates granted waivers under Pub. L. 103–416 and who seek to have early termination of employment excused due to extenuating circumstances—*(*1*) *Amended H–1B petitions.* The waiver granted under Pub. L. 103–416 may be affirmed, and the amended H–1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H–1B classification and that

he or she will continue practicing medicine in an HHS-designated shortage area.

(*2*) *New H–1B petitions.* The Service shall review a new H–1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H–1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103–416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H–1B petitioner and the foreign medical graduate have satisfied the remaining H–1B eligibility criteria described under section 101(a)(15)(H) of the Act and §214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103–416 may be affirmed, and the new H1–B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H–1B petition.

(D) *Failure to notify the Service of any material changes in employment.* Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H–1B status under Pub. L. 103–416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H–1B employment, by having their employer file an amended or a new H–1B petition in accordance with this section and §214.2(h) of this chapter; or establish continued eligibility for the waiver and H–1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H–4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

(10) The applicant and his or her spouse may be interviewed by an immigration officer in connection with the application and consultation may be had with the Director, United States Information Agency and the sponsor of any exchange program in which the applicant has been a participant.

(11) The applicant shall be notified of the decision, and if the application is denied, of the reasons therefor and of the right of appeal in accordance with the provisions of part 103 of this chapter. However, no appeal shall lie from the denial of an application for lack of a favorable recommendation from the Secretary of State. When an interested United States Government agency requests a waiver of the two-year foreign-residence requirement and the Director, United States Information Agency had made a favorable recommendation, the interested agency shall be notified of the decision on its request and, if the request is denied, of the reasons thereof, and of the right of appeal. If the foreign country of the alien's nationality or last residence has furnished statement in writing that it has no objection to his/her being granted a waiver of the foreign residence requirement and the Director, United States Information Agency has made a favorable recommendation, the Director shall be notified of the decision and, if the foreign residence requirement is not waived, of the reasons therefor and of the foregoing right of appeal. However, this ''no objection'' provision is not applicable to the exchange visitor admitted to the United States on or after January 10, 1977 to receive graduate medical education or training, or who acquired such status on or after that date for such purpose; except that the alien who commenced a program before January 10, 1977 and who was readmitted to the United States on or after that date to continue participation in the same program, is eligible for the ''no objection'' waiver.

(d) *Criminal grounds of inadmissibility involving violent or dangerous crimes.* The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible

under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97–116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182)

[29 FR 12584, Sept. 4, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 212.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§§ 212.8–212.9 [Reserved]

§ 212.10 Section 212(k) waiver.

Any applicant for admission who is in possession of an immigrant visa, and who is inadmissible under section 212(a)(5)(A) or 212(a)(7)(A)(i) of the Act, may apply at the port of entry for a waiver under section 212(k) of the Act. If the application for waiver is denied, the application may be renewed in removal proceedings before an immigration judge as provided in 8 CFR part 1240.

[76 FR 53787, Aug. 29, 2011]

§ 212.11 [Reserved]

§ 212.12 Parole determinations and revocations respecting Mariel Cubans.

(a) *Scope.* This section applies to any native of Cuba who last came to the United States between April 15, 1980, and October 20, 1980 (hereinafter referred to as *Mariel Cuban*) and who is being detained by the Immigration and Naturalization Service (hereinafter referred to as the *Service*) pending his or her exclusion hearing, or pending his or her return to Cuba or to another country. It covers Mariel Cubans who have never been paroled as well as those Mariel Cubans whose previous parole has been revoked by the Service. It also applies to any Mariel Cuban, detained under the authority of the Immigration and Nationality Act in any facility, who has not been approved for release or who is currently awaiting movement to a Service or Bureau Of Prisons (BOP) facility. In addition, it covers the revocation of parole for those Mariel Cubans who have been released on parole at any time.

(b) *Parole authority and decision.* The authority to grant parole under section 212(d)(5) of the Act to a detained Mariel Cuban shall be exercised by the Commissioner, acting through the Associate Commissioner for Enforcement, as follows:

(1) *Parole decisions.* The Associate Commissioner for Enforcement may, in the exercise of discretion, grant parole to a detained Mariel Cuban for emergent reasons or for reasons deemed strictly in the public interest. A decision to retain in custody shall briefly set forth the reasons for the continued detention. A decision to release on parole may contain such special conditions as are considered appropriate. A copy of any decision to parole or to detain, with an attached copy translated into Spanish, shall be provided to the detainee. Parole documentation for Mariel Cubans shall be issued by the district director having jurisdiction over the alien, in accordance with the parole determination made by the Associate Commissioner for Enforcement.

(2) *Additional delegation of authority.* All references to the Commissioner and Associate Commissioner for Enforcement in this section shall be deemed to include any person or persons (including a committee) designated in writing by the Commissioner or Associate Commissioner for Enforcement to exercise powers under this section.

(c) *Review Plan Director.* The Associate Commissioner for Enforcement shall appoint a Director of the Cuban Review Plan. The Director shall have authority to establish and maintain appropriate files respecting each Mariel Cuban to be reviewed for possible parole, to determine the order in