

removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.

(ii) An alien who is granted parole into the United States after enactment of the Immigration Reform and Control Act of 1986 for other than the specific purpose of applying for adjustment of status under section 245A of the Act shall not be permitted to avail him or herself of the privilege of adjustment thereunder. Failure to abide by this provision through making such an application will subject the alien to termination of parole status and institution of proceedings under sections 235 and 236 of the Act without the written notice of termination required by § 212.5(e)(2)(i) of this chapter.

(f) *Advance authorization.* When parole is authorized for an alien who will travel to the United States without a visa, the alien shall be issued Form I-512.

(g) *Parole for certain Cuban nationals.* Notwithstanding any other provision respecting parole, the determination whether to release on parole, or to revoke the parole of, a native of Cuba who last came to the United States between April 15, 1980, and October 20, 1980, shall be governed by the terms of § 212.12.

(h) *Effect of parole of Cuban and Haitian nationals.* (1) Except as provided in paragraph (h)(2) of this section, any national of Cuba or Haiti who was paroled into the United States on or after October 10, 1980, shall be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96-422, as amended (8 U.S.C. 1522 note).

(2) A national of Cuba or Haiti shall not be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96-422, as amended, if the individual was paroled into the United States:

(i) In the custody of a Federal, State or local law enforcement or prosecu-

torial authority, for purposes of criminal prosecution in the United States; or

(ii) Solely to testify as a witness in proceedings before a judicial, administrative, or legislative body in the United States.

[47 FR 30045, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982; 52 FR 16194, May 1, 1987; 52 FR 48802, Dec. 28, 1987; 53 FR 17450, May 17, 1988; 61 FR 36611, July 12, 1996; 62 FR 10348, Mar. 6, 1997; 65 FR 80294, Dec. 21, 2000; 65 FR 82255, Dec. 28, 2000; 67 FR 39257, June 7, 2002; 68 FR 35152, June 12, 2003]

#### § 212.6 Border crossing identification cards.

(a) *Application for Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by the Department of State.* A citizen of Mexico, who seeks to travel temporarily to the United States for business or pleasure without a visa and passport, must apply to the DOS on Form DS-156, Visitor Visa Application, to obtain a Form DSP-150 in accordance with the applicable DOS regulations at 22 CFR 41.32 and/or instructions.

(b) *Use—(1) Application for admission with Non-resident Canadian Border Crossing Card, Form I-185, containing separate waiver authorization; Canadian residents bearing DOS-issued combination B-1/B-2 visa and border crossing card (or similar stamp in a passport).* (i) A Canadian citizen or other person sharing common nationality with Canada and residing in Canada who presents a Form I-185 that contains a separate notation of a waiver authorization issued pursuant to § 212.4 may be admitted on the basis of the waiver, provided the waiver has not expired or otherwise been revoked or voided. Although the waiver may remain valid on or after October 1, 2002, the non-biometric border crossing card portion of the document is not valid after that date.

(ii) A Canadian resident who presents a combination B-1/B-2 visa and border crossing card (or similar stamp in a passport) issued by the DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible.

(2) *Application for admission by a national of Mexico—Form DSP-150 issued by the DOS; DOS-issued combination B-1/B-2 visa and border crossing card (or similar stamp in a passport).* (i) The rightful holder of a Form DSP-150 issued by the DOS may be admitted under §235.1(f) of this chapter if found otherwise admissible and if the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(ii) The bearer of a combination B-1/B-2 nonimmigrant visa and border crossing card (or similar stamp in a passport) issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible. A passport is also required.

(iii) Any alien seeking admission as a visitor for business or pleasure, must also present a valid passport with his or her border crossing card, and shall be issued a Form I-94 if the alien is applying for admission from:

(A) A country other than Mexico or Canada, or

(B) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(c) *Validity.* Forms I-185, I-186, and I-586 are invalid on or after October 1, 2002. If presented on or after that date, these documents will be voided at the POE.

(d) *Voidance for reasons other than expiration of the validity of the form—(1) At a POE.* (i) In accordance with 22 CFR 41.122, a Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric border crossing identification card or (a similar stamp in a passport), issued by the DOS, may be physically cancelled and voided by a supervisory immigration officer at a POE if it is considered void pursuant to section 222(g) of the Act when presented at the time of application for admission, or as the alien departs the United States. If the card is considered void and if the applicant for admission is not otherwise subject to expedited removal in accordance with 8 CFR part 235, the applicant shall be advised in writing that he or she may request a hearing before an

immigration judge. The purpose of the hearing shall be to determine his/her admissibility in accordance with §235.6 of this chapter. The applicant may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He or she shall also be advised of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3, and organizations recognized under §292.2 of this chapter located in the district where the removal hearing is to be held. If the applicant requests a hearing, the Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric border crossing identification card (or similar stamp in a passport), issued by the DOS, shall be held by the Service for presentation to the immigration judge.

(ii) If the applicant chooses not to have a hearing, the 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, 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) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for

which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

(iii) *Parole authorization applicant under § 245.15(t).* An applicant for parole authorization under § 245.15(t) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I-601 with the Director of the Nebraska Service Center considering the Form I-131.

(iv) *Parole authorization applicant under § 245.13(k)(2) of this chapter.* An applicant for parole authorization under § 245.13(k)(2) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I-601 with the Director of the Texas Service Center adjudicating the Form I-131.

(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.* If the application is approved the director shall complete Form I-607 for inclusion in the alien’s file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with part 103 of this chapter.

(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,