

grounds or upon new ground(s), a new application must be filed with the appropriate district director.

(e) *Filing or renewal of applications before an Immigration Judge.* (1) An application for the exercise of discretion under section 212(c) of the Act may be renewed or submitted in proceedings before an Immigration Judge under sections 235, 236, or 242 of the Act, and under this chapter. Such application shall be adjudicated by the Immigration Judge, without regard to whether the applicant previously has made application to the district director.

(2) The Immigration Judge may grant or deny an application for advance permission to return to an unrelinquished domicile under section 212(c) of the Act, in the exercise of discretion, unless otherwise prohibited by paragraph (f) of this section.

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the Immigration Judge of this application in accordance with the provisions of § 3.36 of this chapter.

(f) *Limitations on discretion to grant an application under section 212(c) of the Act.* A district director or Immigration Judge shall deny an application for advance permission to enter under section 212(c) of the Act if:

(1) The alien has not been lawfully admitted for permanent residence;

(2) The alien has not maintained lawful domicile in the United States, as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the Act, for at least seven consecutive years immediately preceding the filing of the application;

(3) The alien is subject to exclusion from the United States under paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) of section 212(a) of the Act;

(4) The alien has been convicted of an aggravated felony, as defined by section 101(a)(43) of the Act, and has served a term of imprisonment of at least five years for such conviction; or

(5) The alien applies for relief under section 212(c) within five years of the barring act as enumerated in one or more sections of section 242B(e) (1) through (4) of the Act.

(g) *Relief for certain aliens who were in deportation proceedings before April 24, 1996.* Section 440(d) of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) shall not apply to any applicant for relief under this section whose deportation proceedings were commenced before the Immigration Court before April 24, 1996.

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**§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).**

(a) *Applications under section 212(d)(3)(A)*—(1) *General.* District directors and officers in charge outside the United States in the districts of Bangkok, Thailand; Mexico City, Mexico; and Rome, Italy are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act. The District Director, Washington, DC, has jurisdiction in such cases recommended to the Service at the seat-of-government level by the Department of State. When a consular officer or other State Department official recommends that the benefits of section 212(d)(3)(A) of the Act be accorded an alien, neither an application nor fee shall be required. The recommendation shall specify:

(i) The reasons for inadmissibility and each section of law under which the alien is inadmissible;

(ii) Each intended date of arrival;

(iii) The length of each proposed stay in the United States;

(iv) The purpose of each stay;

(v) The number of entries which the alien intends to make; and

(vi) The justification for exercising the authority contained in section 212(d)(3) of the Act.

If the alien desires to make multiple entries and the consular officer or other State Department official believes that the circumstances justify the issuance of a visa valid for multiple entries rather than for a specified number of entries, and recommends that the alien be accorded an authorization valid for multiple entries, the information required by items (ii) and (iii) shall be furnished only with respect to

the initial entry. Item (ii) does not apply to a bona fide crewman. The consular officer or other State Department official shall be notified of the decision on his recommendation. No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.

(2) *Authority of consular officers to approve section 212(d)(3)(A) recommendations pertaining to aliens inadmissible under section 212(a)(28)(C).* In certain categories of visa cases defined by the Secretary of State, United States consular officers assigned to visa-issuing posts abroad may, on behalf of the Attorney General pursuant to section 212(d)(3)(A) of the Act, approve a recommendation by another consular officer that an alien be admitted temporarily despite visa ineligibility solely because the alien is of the class of aliens defined at section 212(a)(28)(C) of the Act, as a result of presumed or actual membership in, or affiliation with, an organization described in that section. Authorizations for temporary admission granted by consular officers shall be subject to the terms specified in §212.4(c) of this chapter. Any recommendation which is not clearly approvable shall, and any recommendation may, be presented to the appropriate official of the Immigration and Naturalization Service for a determination.

(b) *Applications under section 212(d)(3)(B).* An application for the exercise of discretion under section 212(d)(3)(B) of the Act shall be submitted on Form I-192 to the district director in charge of the applicant's intended port of entry prior to the applicant's arrival in the United States. (For Department of State procedure when a visa is required, see 22 CFR 41.95 and paragraph (a) of this section.) If the application is made because the applicant may be inadmissible due to present or past membership in or affiliation with any Communist or other totalitarian party or organization, there shall be attached to the application a written statement of the history of the applicant's membership or affiliation, including the period of such membership or affiliation, whether the applicant held any office in the organiza-

tion, and whether his membership or affiliation was voluntary or involuntary. If the applicant alleges that his membership or affiliation was involuntary, the statement shall include the basis for that allegation. When the application is made because the applicant may be inadmissible due to disease, mental or physical defect, or disability of any kind, the application shall describe the disease, defect, or disability. If the purpose of seeking admission to the United States is for treatment, there shall be attached to the application statements in writing to establish that satisfactory treatment cannot be obtained outside the United States; that arrangements have been completed for treatment, and where and from whom treatment will be received; what financial arrangements for payment of expenses incurred in connection with the treatment have been made, and that a bond will be available if required. When the application is made because the applicant may be inadmissible due to the conviction of one or more crimes, the designation of each crime, the date and place of its commission and of the conviction thereof, and the sentence or other judgment of the court shall be stated in the application; in such a case the application shall be supplemented by the official record of each conviction, and any other documents relating to commutation of sentence, parole, probation, or pardon. If the application is made at the time of the applicant's arrival to the district director at a port of entry, the applicant shall establish that he was not aware of the ground of inadmissibility and that it could not have been ascertained by the exercise of reasonable diligence, and he shall be in possession of a passport and visa, if required, or have been granted a waiver thereof. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the Provisions of part 3 of this chapter. If denied, the denial shall be without prejudice to renewal of the application in the course of proceedings before a special inquiry officer under sections 235 and 236 of the Act and this chapter.

When an appeal may not be taken from a decision of a special inquiry officer excluding an alien but the alien has applied for the exercise of discretion under section 212(d)(3)(B) of the Act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of § 236.5(b) of this chapter.

(c) *Terms of authorization*—(1) *General.* Except as provided in paragraph (c)(2) of this section, each authorization under section 212(d)(3)(A) or (B) of the Act shall specify:

(i) Each section of law under which the alien is inadmissible;

(ii) The intended date of each arrival, unless the applicant is a bona fide crewman. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iii) The length of each stay authorized in the United States, which shall not exceed the period justified and shall be subject to limitations specified in 8 CFR part 214. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iv) The purpose of each stay;

(v) The number of entries for which the authorization is valid;

(vi) Subject to the conditions set forth in paragraph (c)(2) of this section, the dates on or between which each application for admission at POEs in the United States is valid;

(vii) The justification for exercising the authority contained in section 212(d)(3) of the Act; and

(viii) That the authorization is subject to revocation at any time.

(2) *Conditions of admission.* (i) For aliens issued an authorization for temporary admission in accordance with this section, admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization.

(ii) The period for which the alien's admission is authorized pursuant to this section shall not exceed the period justified, or the limitations specified, in 8 CFR part 214 for each class of non-immigrant, whichever is less.

(3) *Validity.* (i) Authorizations granted to crew members may be valid for a maximum period of 2 years for application for admission at U.S. POEs and may be valid for multiple entries.

(ii) An authorization issued in conjunction with an application for a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by the DOS shall be valid for a period not to exceed the validity of the biometric BCC for applications for admission at U.S. POEs and shall be valid for multiple entries.

(iii) A multiple entry authorization for a person other than a crew member or applicant for a Form DSP-150 may be made valid for a maximum period of 5 years for applications for admission at U.S. POEs.

(iv) An authorization that was previously issued in conjunction with Form I-185, Nonresident Alien Canadian Border Crossing Card, and that is noted on the card may remain valid. Although the waiver may remain valid, the non-biometric border crossing card portion of this document is not valid after that date. This waiver authorization shall cease if otherwise revoked or voided.

(v) A single-entry authorization to apply for admission at a U.S. POE shall not be valid for more than 6 months from the date the authorization is issued.

(vi) An authorization may not be revalidated. Upon expiration of the authorization, a new application and authorization are required.

(d) *Admission of groups inadmissible under section 212(a)(28) for attendance at international conferences.* When the Secretary of State recommends that a group of nonimmigrant aliens and their accompanying family members be admitted to attend international conferences notwithstanding their inadmissibility under section 212(a)(28) of the Act, the Deputy Commissioner, may enter an order pursuant to the authority contained in section 212(d)(3)(A) of the Act specifying the terms and conditions of their admission and stay.

(e) *Inadmissibility under section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the

Act, the temporary admission of a non-immigrant visitor is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

(f) *Action upon alien's arrival.* Upon admitting an alien who has been granted the benefits of section 212(d)(3)(A) of the Act, the immigration officer shall be guided by the conditions and limitations imposed in the authorization and noted by the consular officer in the alien's passport. When admitting any alien who has been granted the benefits of section 212(d)(3)(B) of the Act, the Immigration officer shall note on the arrival-departure record, Form I-94, or crewman's landing permit, Form I-95, issued to the alien, the conditions and limitations imposed in the authorization.

(g) *Authorizations issued to crewmen without limitation as to period of validity.* When a crewman who has a valid section 212(d)(3) authorization without any time limitation comes to the attention of the Service, his travel document shall be endorsed to show that the validity of his section 212(d)(3) authorization expires as of a date six months thereafter, and any previously-issued Form I-184 shall be lifted and Form I-95 shall be issued in its place and similarly endorsed.

(h) *Revocation.* The Deputy Commissioner or the district director may at any time revoke a waiver previously authorized under section 212(d)(3) of the Act and shall notify the non-immigrant in writing to that effect.

(i) *Alien witnesses and informants—(1) Waivers under section 212(d)(1) of the Act.* Upon the application of a federal or state law enforcement authority ("LEA"), which shall include a state or federal court or United States Attorney's Office, pursuant to the filing of Form I-854, Inter-Agency Alien Witness and Informant Record, for non-immigrant classification described in section 101(a)(15)(S) of the Act, the Commissioner shall determine whether a ground of exclusion exists with respect to the alien for whom classification is sought and, if so, whether it is in the national interest to exercise the

discretion to waive the ground of excludability, other than section 212(a)(3)(E) of the Act. The Commissioner may at any time revoke a waiver previously authorized under section 212(d)(1) of the Act. In the event the Commissioner decides to revoke a previously authorized waiver for an S non-immigrant, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to the decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to revoke.

(2) *Grounds of removal.* Nothing shall prohibit the Service from removing from the United States an alien classified pursuant to section 101(a)(15)(S) of the Act for conduct committed after the alien has been admitted to the United States as an S nonimmigrant, or after the alien's change to S classification, or for conduct or a condition undisclosed to the Attorney General prior to the alien's admission in, or change to, S classification, unless such conduct or condition is waived prior to admission and classification. In the event the Commissioner decides to remove an S nonimmigrant from the United States, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA

have a right of appeal from any decision to remove.

[29 FR 15252, Nov. 13, 1964, as amended at 30 FR 12330, Sept. 28, 1965; 31 FR 10413, Aug. 3, 1966; 32 FR 15469, Nov. 7, 1967; 35 FR 3065, Feb. 17, 1970; 35 FR 7637, May 16, 1970; 40 FR 30470, July 21, 1975; 51 FR 32295, Sept. 10, 1986; 53 FR 40867, Oct. 19, 1988; 60 FR 44264, Aug. 25, 1995; 60 FR 52248, Oct. 5, 1995; 67 FR 71448, Dec. 2, 2002]

**§212.5 Parole of aliens into the United States.**

(a) The authority of the Secretary to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; and those other officials as may be designated in writing, subject to the parole and detention authority of the Secretary or his designees. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

(b) The parole of aliens within the following groups who have been or are detained in accordance with §235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding:

(1) Aliens who have serious medical conditions in which continued detention would not be appropriate;

(2) Women who have been medically certified as pregnant;

(3) Aliens who are defined as juveniles in §236.3(a) of this chapter. The Director, Detention and Removal; directors of field operations; field office directors; deputy field office directors; or chief patrol agents shall follow the guidelines set forth in §236.3(a) of this chapter and paragraphs (b)(3)(i) through (iii) of this section in determining under what conditions a juvenile should be paroled from detention:

(i) Juveniles may be released to a relative (brother, sister, aunt, uncle, or grandparent) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention.

(ii) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompanying relative who is in detention.

(iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a non-relative in detention who accompanied him or her on arrival, the question of releasing the minor and the accompanying non-relative adult shall be addressed on a case-by-case basis;

(4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section.

(c) In the case of all other arriving aliens, except those detained under §235.3(b) or (c) of this chapter and paragraph (b) of this section, those officials listed in paragraph (a) of this section may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (d) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (f) of this section shall be denied parole and detained for removal in accordance with the provisions of §235.3(b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under §235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular