

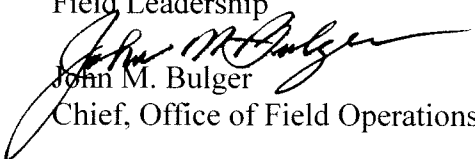


U.S. Citizenship
and Immigration
Services

HQ 70/10.10

Interoffice Memorandum

TO: Field Leadership

FROM: 
John M. Bulger
Chief, Office of Field Operations

DATE: February 04, 2009

SUBJECT: Clarification regarding Processing of Initial Parole Requests Presented by Natives or Citizens of Cuba who are released under Section 236

This memorandum provides U.S. Citizenship and Immigration Services (USCIS) Field Offices guidance on processing of initial parole requests presented by natives or citizens of Cuba who are present in the United States without having been inspected, and who have been released from custody under section 236(a)(2) of the Immigration and Nationality Act (Act or INA), as amended, 8 U.S.C. § 1226.

Background

In 1998, the General Counsel of the former Immigration and Naturalization Service (INS GC) advised the then INS Commissioner that, in the case of an alien who is present without inspection and admission or parole, the alien's release from custody under section 236(a)(2) of the Act was the legal equivalent of parole under section 212(d)(5)(A) of the Act, 8 U.S.C. § 1182(d)(5)(A). On September 28, 2007, however, DHS Office of the General Counsel (OGC) issued a formal legal opinion titled, *Clarification of the Relation Between Release Under Section 236 and Parole Under Section 212(d)(5) of the Immigration and Nationality Act (INA)*. In this formal legal opinion, the DHS General Counsel concluded that the 1998 opinion was incorrect in concluding that release under section 236 is parole under section 212(d)(5). The DHS OGC memorandum states that a release from custody of an applicant for admission under section 236(a)(2) of the Act without resolution of his or her admissibility is not a parole under section 212(d)(5)(A).

USCIS adjudicators are instructed to follow the 2007 DHS OGC opinion, rather than the 1998 INS GC opinion. Thus, a Cuban native or citizen who has been released from custody under section 236(a)(2) cannot for that reason be found to have been "paroled" under section 212(d)(5)(A) for purposes of eligibility for Adjustment of Status (AOS) pursuant to the Cuban Adjustment Act (CAA).

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Policy guidance

Although release under section 236(a)(2) is not parole, release under 236(a)(2) does not preclude a separate decision to parole the alien under section 212(d)(5)(A). Effective immediately, Field Offices are instructed to process Cuban natives and citizens for an initial parole under section 212(d)(5)(A), even if such a request is presented by a Cuban native or citizen who has previously been released under section 236. Field Offices must process the request for an initial parole under 212(d)(5)(A) received from a Cuban native or citizen regardless of which DHS component released the applicant under section 236.

Field Offices are reminded that an alien who has been released under section 236 is not automatically entitled to parole and the decision whether to grant parole or not to an inadmissible alien is a matter of agency discretion. However, Field Offices should generally exercise this discretion favorably, if except for the lack of having been paroled, the alien is otherwise eligible for adjustment of status under the CAA and also merits a favorable exercise of the discretion to grant adjustment.

In processing such initial parole requests, USCIS Field Offices must follow the procedures outlined in the March 4, 2008, memorandum titled, *Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices* and the February 3, 2009, memorandum titled, *Amended guidance regarding Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices*.

If at the time of the parole issuance, the Cuban native or citizen has already been physically present in the United States for at least one year, then such an applicant may apply for adjustment of status under the CAA immediately after having been paroled, as the statute does not require that the one year period of physical presence follow the parole.

Contact information

Questions regarding this memorandum may be directed to Vinay Singla, Office of Field Operations, through appropriate supervisory channels.

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