

## §212.6

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the latter case the alien shall be processed in accordance with paragraph (d)(2) of this section except that no written notice shall be required.

(2)(i) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed by removal within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director or the chief patrol agent 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(d)(2)(i) of this chapter.

(e) *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.

(f) *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 and 212.13.

(g) *Effect of parole of Cuban and Haitian nationals.* (1) Except as provided in paragraph (g)(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 prosecutorial 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]

### §212.6 Nonresident alien border crossing cards.

(a) *Use—(1) Nonresident alien Canadian border crossing card, Form I-185.* Any Canadian citizen or British subject residing in Canada may use Form I-185 for entry at a United States port of entry.

(2) *Mexican border crossing card, Form I-186 or I-586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I-186 or I-586, may be admitted under §235.1(f) of this chapter if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall

be issued Form I-94 if the alien is applying for admission from:

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

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

(b) *Application.* A citizen of Canada or a British subject residing in Canada must apply on Form I-175 for a nonresident alien border crossing card, supporting his/her application with evidence of Canadian or British citizenship, residence in Canada, and two photographs, size 1½" × 1½". Form I-175 must be submitted to an immigration officer at a Canadian border port of entry. A citizen of Mexico must apply on Form I-190 for a nonresident alien border crossing card, supporting his application with evidence of Mexican citizenship and residence, a valid unexpired passport or a valid Mexican Form 13, and one color photograph with a white background. The photograph must be glossy, unretouched and not mounted. Dimension of the facial image must be approximately one inch from chin to top of hair, and the applicant must be shown in ¾ frontal view showing right side of face with right ear visible. Form I-190 must be submitted to an immigration officer at a Mexican border port of entry or to an American consular officer in Mexico, other than one assigned to a consulate situated adjacent to the border between Mexico and the United States; however, Form FS-257 may be used in lieu of Form I-190 when the application is made to an American consular officer. If the application is submitted to an immigration officer, each applicant, regardless of age, must appear in person for an interview concerning eligibility for a nonresident alien border crossing card. If the application is submitted to a consular officer, each applicant, except a child under fourteen years of age, must appear in person for the interview. If the application is denied, the applicant shall be given a notice of denial with the reasons on Form I-180. There is no appeal from the denial but the denial is without prejudice to a subsequent application for a visa or for admission to the United States.

(c) *Validity.* Notwithstanding any expiration dates which may appear there-

on, Forms I-185, I-186, and I-586, are valid until revoked or voided.

(d) *Voidance*—(1) *At port of entry.* Forms I-185, I-186 and I-586 may be declared void by a supervisory immigration officer at a port of entry. If the card is declared void, the applicant shall be advised in writing that he/she may request a hearing before an immigration judge to determine his/her admissibility in accordance with part 236 of this chapter and may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services provided by organizations and attorneys qualified under part 3 of this chapter and organizations recognized under §292.2 of this chapter, located in the district where the exclusion hearing is to be held. If the applicant requests a hearing, Forms I-185, I-186 and I-586 shall be held at the port of entry for presentation to the immigration judge. If the applicant chooses not to have a hearing, the card shall be voided. The alien to whom the form was issued shall be notified of the action taken and the reasons therefore by means of form I-180 delivered in person or, if such action is not possible, by mailing the Form I-180 to the last known address.

(2) *Within the United States.* If the holder of a Form I-185, I-186 or I-586 is placed under deportation proceedings, no action to void the card shall be taken pending the outcome of the hearing. If the alien is ordered deported or granted voluntary departure, the card shall be voided by an immigration officer. In the case of an alien holder of a Form I-185, I-186 or I-586 who is granted voluntary departure without a hearing, the card may be declared void by an immigration officer who is authorized to issue an Order to Show Cause or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I-185, I-186 or I-586 may be declared void by a consular officer in Mexico or Canada if the card was issued in one of those countries.

(4) *Grounds.* Grounds for voidance of a Form I-185, I-186 or I-586 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; or that he/she has

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abandoned his/her residence in the country upon which the card was granted.

(e) *Replacement.* If a nonresident alien border crossing card has been lost, stolen, mutilated, or destroyed, the person to show the card was issued may apply for a new card as provided for in this section. A fee as prescribed in §103.7(b)(1) of this chapter must be submitted at time of application for the replacement card. The holder of a Form I-185, I-186, or I-586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

(f) *Previous removal or deportation; waiver of inadmissibility.* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of an alien who is inadmissible under paragraph (16) or (17) of section 212(a) of the Act is authorized if such alien is in possession of a Mexican Non-resident Alien Border Crossing Card and he establishes that he is otherwise admissible as a nonimmigrant visitor or student except for his removal or deportation prior to November 1, 1956, because of entry without inspection or lack of required documents.

[30 FR 10184, Aug. 17, 1965, as amended at 34 FR 129, Jan. 4, 1969; 35 FR 3065, Feb. 17, 1970; 37 FR 7584, Apr. 18, 1972; 37 FR 8061, Apr. 25, 1972; 45 FR 11114, Feb. 20, 1980; 46 FR 25082, May 5, 1981; 48 FR 35349, Aug. 4, 1983; 60 FR 40068, Aug. 7, 1995; 62 FR 9074, Feb. 28, 1997; 62 FR 10349, Mar. 6, 1997]

### §212.7 Waiver of certain grounds of excludability.

(a) *Section 212(h) or (i)—(1) Filing procedure—(i) Immigrant visa or fiance(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act 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(l).* An applicant for parole authorization under §245.15(l) 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.

(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, 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