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.


[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 It covers Mariel Cubans who have never been paroled as well as those Mariel Cubans whose previous parole has been revoked by the Service.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
which the cases shall be reviewed, and
to coordinate activities associated with
these reviews.
(d) Recommendations to the Associate
Commissioner for Enforcement. Parole
recommendations for detained Mariel
Cubans shall be developed in accord-
ance with the following procedures.
(1) Review Panels. The Director shall
designate a panel or panels to make pa-
role recommendations to the Associate
Commissioner for Enforcement. A
Cuban Review Panel shall, except as
otherwise provided, consist of two per-
sons. Members of a Review Panel shall
be selected from the professional staff
of the Service. All recommendations by
a two-member Panel shall be unani-
mous. If the vote of a two-member
Panel is split, it shall adjourn its delib-
erations concerning that particular de-
tainee until a third Panel member is
added. A recommendation by a three-
member Panel shall be by majority
vote. The third member of any Panel
shall be the Director of the Cuban Re-
view Plan or his designee.
(2) Criteria for Review. Before making
any recommendation that a detainee
be granted parole, a majority of the
Cuban Review Panel members, or the
Director in case of a record review,
must conclude that:
(i) The detainee is presently a non-
violent person;
(ii) The detainee is likely to remain nonviolent;
(iii) The detainee is not likely to pose a threat to the community fol-
lowing his release; and
(iv) The detainee is not likely to vio-
late the conditions of his parole.
(3) Factors for consideration. The fol-
lowing factors should be weighed in
considering whether to recommend fur-
ther detention or release on parole of a
detainee:
(i) The nature and number of discipli-
nary infractions or incident reports re-
ceived while in custody;
(ii) The detainee’s past history of
criminal behavior;
(iii) Any psychiatric and psycho-
logical reports pertaining to the de-
tainee’s mental health;
(iv) Institutional progress relating to participation in work, educational and
vocational programs;
(v) His ties to the United States, such
as the number of close relatives residing
lawfully here;
(vi) The likelihood that he may ab-
scend, such as from any sponsorship
program; and
(vii) Any other information which is
probative of whether the detainee is
likely to adjust to life in a community,
is likely to engage in future acts of vio-
ience, is likely to engage in future
criminal activity, or is likely to vio-
late the conditions of his parole.
(4) Procedure for review. The following
procedures will govern the review proc-
cess:
(i) Record review. Initially, the Direc-
tor or a Panel shall review the detain-
ees’s file. Upon completion of this
record review, the Director or the
Panel shall issue a written rec-
ommendation that the detainee be re-
leased on parole or scheduled for a per-
sonal interview.
(ii) Personal interview. If a rec-
ommendation to grant parole after
only a record review is not accepted or
if the detainee is not recommended for
release, a Panel shall personally inter-
view the detainee. The scheduling of
such interviews shall be at the discre-
tion of the Director. The detainee may
be accompanied during the interview
by a person of his choice, who is able to
attend at the time of the scheduled
interview, to assist in answering any
questions. The detainee may submit to
the Panel any information, either orally
or in writing, which he believes pre-
sents a basis for release on parole.
(iii) Panel recommendation. Following
completion of the interview and its de-
liberations, the Panel shall issue a
written recommendation that the de-
tainee be released on parole or remain
in custody pending deportation or
pending further observation and subse-
quent review. This written rec-
ommendation shall include a brief
statement of the factors which the
Panel deems material to its rec-
ommendation. The recommendation
and appropriate file material shall be
forwarded to the Associate Commis-
sioner for Enforcement, to be consid-
ered in the exercise of discretion pur-
suant to §212.12(b).
(e) Withdrawal of parole approval. The Associate Commissioner for Enforcement may, in his or her discretion, withdraw approval for parole of any detainee prior to release when, in his or her opinion, the conduct of the detainee, or any other circumstance, indicates that parole would no longer be appropriate.

(f) Sponsorship. No detainee may be released on parole until suitable sponsorship or placement has been found for the detainee. The paroled detainee must abide by the parole conditions specified by the Service in relation to his sponsorship or placement. The following sponsorships and placements are suitable:

1. Placement by the Public Health Service in an approved halfway house or mental health project;
2. Placement by the Community Relations Service in an approved halfway house or community project; and
3. Placement with a close relative such as a parent, spouse, child, or sibling who is a lawful permanent resident or a citizen of the United States.

(g) Timing of reviews. The timing of review shall be in accordance with the following guidelines:

1. Parole revocation cases. The Director shall schedule the review process in the case of a new or returning detainee whose previous immigration parole has been revoked. The review process will commence with a scheduling of a file review, which will ordinarily be expected to occur within approximately three months after parole is revoked. In the case of a Mariel Cuban who is in the custody of the Service, the Cuban Review Plan Director may, in his or her discretion, suspend or postpone the parole review process if such detainee’s prompt deportation is practicable and proper.

2. Continued detention cases. A subsequent review shall be commenced for any detainee within one year of a refusal to grant parole under §212.12(b), unless a shorter interval is specified by the Director.

3. Discretionary reviews. The Cuban Review Plan Director, in his discretion, may schedule a review of a detainee at any time when the Director deems such a review to be warranted.

(h) Revocation of parole. The Associate Commissioner for Enforcement shall have authority, in the exercise of discretion, to revoke parole in respect to Mariel Cubans. A district director may also revoke parole when, in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Associate Commissioner. Parole may be revoked in the exercise of discretion when, in the opinion of the revoking official:

1. The purposes of parole have been served;
2. The Mariel Cuban violates any condition of parole;
3. It is appropriate to enforce an order of exclusion or to commence proceedings against a Mariel Cuban; or
4. The period of parole has expired without being renewed.


§ 212.13 [Reserved]

§ 212.14 Parole determinations for alien witnesses and informants for whom a law enforcement authority (“LEA”) will request S classification.

(a) Parole authority. Parole authorization under section 212(d)(5) of the Act for aliens whom LEAs seek to bring to the United States as witnesses or informants in criminal/counter terrorism matters and to apply for S classification shall be exercised as follows:

1. Grounds of eligibility. The Commissioner may, in the exercise of discretion, grant parole to an alien (and the alien’s family members) needed for law enforcement purposes provided that a state or federal LEA:

(i) Establishes its intention to file, within 30 days after the alien’s arrival in the United States, an application for S nonimmigrant status on the form designated for such purposes, with the Assistant Attorney General, Criminal Division, Department of Justice, in accordance with the instructions on or attached to the form, which will include the names of qualified family members for whom parole is sought;