SAMPLE LANGUAGE FOR HAB APPROVAL TRANSMISSIONS TO U.S. CONSULATE POST OVERSEASOR TO USCIS DOMESTIC OFFICE FOR RE-PAROLE

October 24, 2013

New Parole Case (Standard)

USCIS International Operations (IO) Division has approved parole for [insert name] for a period of [insert xx weeks/months/years] contingent upon successful completion of DS-160 processing, identity verification and biometric checks by your office. Please review the attached encrypted parole authorization memo for instructions on issuance of a travel document (boarding foil). The password will follow in a separate email. If you have any questions, or require additional information please contact me, with a copy to all addressees on this message.

Thanks for your assistance!

New Parole Case (Beneficiary has to travel by a certain time frame-case is especially urgent or time sensitive)

USCIS International Operations (IO) Division has approved parole for [insert name] for a period of [insert xx weeks/months/years], contingent upon successful completion of DS-160 processing, identity verification and biometric checks by your office. Please review the attached encrypted parole authorization memo for instructions on issuance of a travel document (boarding foil). The password will follow in a separate email. Please note that this case is **particularly time sensitive and/or urgent**. Accordingly, we would appreciate it if you could process this case expeditiously and issue the boarding foil to the beneficiary as soon as possible [or by fixed date if known], provided there is no new identity or derogatory information found during Consular processing. If new identity or derogatory information is found, please provide that information to our office as soon as possible for our expeditious review and resolution. If you have any questions, or require additional information, please contact me, with a copy to all addressees on this message.

Thanks for your assistance!

Re-parole Case (Standard)

USCIS International Operations (IO) Division has approved parole for [insert name] for an additional period of [insert xx weeks/months/years]. Please review the attached re-parole authorization memo for instructions on issuing the beneficiary a new I-94, *Arrival/Departure Record*. Password will follow in a separate email. If you have any questions, or require additional information, feel free to contact me, with a copy to all addressees on this message.

Thanks for your assistance!

Re-parole Case (Complex-I-94 needs to be backdated more than 1 month)

USCIS International Operations (IO) Division has approved parole for [insert name] for an additional period of [insert xx weeks/months/years]. Please review the attached re-parole authorization memo for instructions on issuing the beneficiary a new I-94, Arrival/Departure record. Password will follow in a separate email. Please note that due to extenuating circumstances beyond the beneficiary's control; his/her current I-94 has expired. Accordingly, please issue a new I-94 with the validity date listed on the attached memo. If you have any questions, or require additional information, feel free to contact me, with a copy to all addressees on this message.

Thanks for your assistance!

Response (New Info Resolved-Approval stands)

We have reviewed the new identify information and/or derogatory information submitted by your office related to [insert beneficiary's name] and have determined that it does not impact our decision to approve parole. Accordingly, please proceed with issuing a travel document (boarding foil) for the beneficiary. If you have any questions or concerns, feel free to contact me, with a copy to all addressees on this message.

Thanks for your assistance!

Response (New Info Not Resolved-Application Denied)

We have reviewed the new identity information and/or derogatory information submitted by your office related to [insert beneficiary's name] and have decided to deny the application for parole. Accordingly, please do not issue a travel document (boarding foil) to the beneficiary. Attached is a denial notice that you may present to the applicant. If you have any questions or concerns, feel free to contact me, with a copy to all addressees on this message.

Thanks for your assistance!

Jowett, Haley L

From: Runge, Elizabeth A
Sent: Wednesday, June 19, 2013 3:27 PM
To: Amano, Antonino A (Anton); Bratton, Sheila E; Fazal, Lubna A; McGraw, John R; Menendez, Angela M; Naquin, Marie-line; Plummer, Ebony N (CTR); Prakobkul, Panita (CTR); Runge, Elizabeth A; Shed, Lateia D (CTR); Urquiola, Rosa R
Subject: ICE parole cases

(b)(5)

Hello Everyone,

Thanks,

Liz

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Refugee, Asylum and International Operations
Washington, DC 20529

U.S. Citizenship and Immigration Services

Memorandum

TO: Jonathan Scharfen
Acting Director,
United States Citizenship and Immigration Services

FROM: Lori Scialabba
Associate Director
Refugee, Asylum and International Operations

DATE:

SUBJECT: Classified Systems[1] Checks for Humanitarian and Significant Public Benefit Parole Requests (b)(5) (b)(7)(e)

[redacted]

[redacted]

(b)(5) (b)(7)(e)

[redacted]

Concur Jodi Schaefer

Do Not Concur _____

Date Oct 9, 2008

Copy to: Deputy
: COS
Assoc Dir Natl Sec

Jowett, Haley L

From: Runge, Elizabeth A
Sent: Monday, August 05, 2013 1:59 PM
To: Amano, Antonino A (Anton); Bratton, Sheila E; Fazal, Lubna A; Linnan, Raymond J; McGraw, John R; Naquin, Marie-line; Urquiola, Rosa R; Burdine, Tonya L; Chang, Ninie T; Coker, Oluwole A (Wole); Huang, Jessica L; Kemling, Patricia A; Lowe, William A; Mancuso, Deborah T; Patel, Mahesh; Peralta-Mihalko, Pilar M (Pilar.M.Peralta-Mihalko@uscis.dhs.gov); Petrie, Joan C; Tardie, Susie L; Teferra, Leikun
Cc: Nicholson, Maura J
Subject: Clarification on REF/NOID and EARM procedures for IO parole adjudications
Attachments: 2013-06-03 RFEs NOIDs.pdf

Hello HAB and IASB colleagues,

In response to recent concerns raised regarding EARM checks and RFE/NOID issuance in light of June 3rd USCIS guidance when processing parole requests, the following guidance should be followed by IO (HAB & IASB) staff:

(b)(5) (b)(7)(e)

Thanks,

Liz

Liz Runge, Branch Chief
Humanitarian Affairs Branch
USCIS International Operations Division
Department of Homeland Security
Work Tel: 202-272-8108
Email: elizabeth.a.runge@uscis.dhs.gov

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June 3, 2013 **PM-602-0085**

Policy Memorandum

SUBJECT: Requests for Evidence and Notices of Intent to Deny

Purpose

The purpose of this policy memorandum (PM) is to clarify the role of Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) in the adjudication of petitions, applications, and other requests. It revises Chapter 10.5(a) of the Adjudicator's Field Manual (AFM) – AFM Update AD12-04.

Scope

This PM supersedes all previous guidance and applies to all U.S. Citizenship and Immigration Services (USCIS) employees, unless specifically exempted in this PM.[1]

Authority

8 CFR 103.2(b)(8).

Background

A report issued by the Office of Inspector General (OIG) entitled "The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers," raised issues concerning the proper use of RFEs in adjudications. The OIG report referenced a USCIS memorandum dated June 1, 2007 entitled "Removal of the Standardized Request for Evidence Processing Timeframe Final Rule, 8 CFR § 103.2(b)." That USCIS memorandum had revised Chapter 10.5(a)(2) of the AFM to read: "RFEs should, if possible, be avoided." OIG advised that this sentence has been taken out of context by some officers. In response to the OIG report, and to ensure consistency, this PM clarifies USCIS policy regarding the issuance of both RFEs and NOIDs.

[1] Asylum applications filed on Form I-589, Application for Asylum and for Withholding of Removal and applications filed on Form I-590, Requests for Classification as Refugee, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failures to appear.

Policy

Under 8 CFR 103.2(b)(8), USCIS has the discretion to issue RFEs and NOIDs in appropriate circumstances. USCIS also has the discretion in some instances to issue a denial without first issuing an RFE or a NOID. This PM offers guidance as to the exercise of that discretion. The guidance in this PM applies not only to applications and petitions, but also to requests for consideration of deferred action and to other adjudications not classified as benefit requests. This PM emphasizes that an RFE is not to be avoided; it is to be used when the facts and the law warrant. At the same time, an RFE is not to be issued when the evidence already submitted establishes eligibility or ineligibility in all respects for the particular benefit or service. An unnecessary RFE can delay case completion and result in additional unnecessary costs to both the government and the individual (a term used throughout this PM to refer to the person or entity filing the particular application, petition, or other request).

A. General Principles: RFEs and NOIDs

The guidance articulated under this heading is generally applicable. However, there may be special circumstances where the general principles do not apply. In such instances, there will be accompanying special instructions that will provide alternate guidance. In the absence of special instructions, officers must follow these general principles.

In each case, officers must:

- Understand the specific elements required to demonstrate eligibility for the particular application, petition, or request.
- Understand the standard of proof that applies to the particular application, petition, or request. In most instances, the individual has the standard of proving eligibility by a preponderance of the evidence. Under that standard, the individual must prove it is more likely than not that each of the required elements has been met.
- Review all the evidence to determine whether each of the essential elements has been satisfied by the applicable standard of proof. Fraud and national security concerns should be vetted pursuant to FDNS and CARRP protocols.

If all the essential elements have been satisfied by the applicable standard of proof, including any additional requirement to establish that the individual warrants a favorable exercise of discretion, the officer shall approve the application, petition, or request without issuance of an RFE. 8 CFR 103.2(b)(8)(i).

If the totality of the evidence submitted does not meet the applicable standard of proof, and the adjudicator determines that there is no possibility that additional information or explanation will cure the deficiency, then the adjudicator shall issue a denial.

RFEs. If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer should issue an RFE unless he or she determines there is no possibility that additional evidence available to the individual might cure the deficiency.

NOIDs. The issuance of a NOID is required as described under AFM Chapter 10.5(a)(3). A NOID is required before denying any immigration benefit requests submitted on the following forms:

- Form I-800A (relating to adoptions) based on a mandatory denial ground in 8 CFR 204.309(a);
- Form I-800 based on a mandatory denial ground in 8 CFR 204.309(b); or
- Form I-485 filed by a physician under 8 CFR 245.18(i) because the physician failed to comply with the conditions attached to his or her National Interest Waiver.

A NOID is also required when derogatory information is uncovered during the course of the adjudication that is not known to the individual, according to 8 CFR 103.2(b)(16).

The issuance of a NOID is also appropriate in the following circumstances:

- There is little or no evidence submitted (e.g., a "skeletal filing"); or
- The individual has met the threshold eligibility requirements for the requested benefit or action, but has not established that he or she warrants a favorable exercise of discretion (where there is also a discretionary component to the adjudication).

B. Additional Considerations

In some cases, particularly where the response to an RFE opens up new lines of inquiry, a follow-up RFE might prove necessary. However, officers must include in a single RFE all the additional evidence they anticipate having to request. The officer's careful consideration of all the apparent gaps in the evidence will minimize the need for multiple RFEs.

In response to an RFE or a NOID, individuals must submit all of the requested materials together at one time, along with the original RFE or NOID. If only some of the requested evidence is submitted, USCIS will treat such submission as a request for a decision on the record. 8 CFR 103.2(b)(11).

Apart from RFEs, officers have the discretion to validate assertions or corroborate evidence and information by consulting USCIS or other governmental files, systems, and databases, or by obtaining publicly available information that is readily accessible. 8 USC 1357(b); 8 CFR 103.2(b)(16)(i). For example, an officer may, in the exercise of discretion, verify information relating to a petitioner's corporate structure by consulting a publicly available state business website. As another example, an officer may, in the exercise of discretion, corroborate evidence relating to an individual's history of nonimmigrant stays in the United States by searching a non-public, U.S. government database. Any such additional evidence must be placed in the Record of Proceeding, unless specifically exempted from inclusion, as is the case for classified materials. Further, certain types of evidence, including commercial data reports and "For Official Use Only" (FOUO) materials, must be filed and maintained separately from the Record of Proceeding. For details, please refer to AFM Chapter 10.2, *Record of Proceeding*.

Under 8 CFR 103.2(b)(16)(i), if a decision adverse to the individual is based on derogatory information, and the individual is unaware that the information is being considered, the officer

must advise the individual of this information and offer him or her an opportunity to rebut it before the decision is rendered. Any explanation, rebuttal, or information presented by or on behalf of the individual must be included in the record of proceeding. **There is an exception for certain classified materials.**[2]

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy.

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[2] Under 8 CFR 103.2(b)(16)(ii) and (iv), a determination of statutory eligibility shall be based only on information that is contained in the record of proceeding and disclosed to the individual, except when the information is classified under Executive Order No. 12356 as requiring protection from unauthorized disclosure in the interest of national security and the classifying authority has not agreed in writing to such disclosure. Whenever the Director of USCIS believes he or she can do so consistently with safeguarding both the information and its source, the Director or his or her designee should direct that the individual be given notice of the general nature of the information and an opportunity to offer opposing evidence. The Director's or his or her designee's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

Under 8 CFR 103.2(b)(16)(iii), where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the USCIS Director or his or her designee has determined that such information is relevant and is classified under Executive Order No. 12356 as requiring protection from unauthorized disclosure in the interest of national security.

U.S. Citizenship and Immigration Services

BASIC

HUMANITARIAN PROGRAMS

PARTICIPANTS GUIDE

October 2014

SYLLABUS

COURSE TITLE: Humanitarian Programs

COURSE NUMBER: 223

COURSE DATE: September 2012

LENGTH AND METHOD OF PRESENTATION:

LECTURE	LAB	P.E.	TOTAL	PROGRAM
2:30	0:00	0:30	3:00	BASIC

DESCRIPTION:

This lesson provides an introduction to humanitarian programs and special legislative provisions administered by USCIS. The eligibility criteria and process for adjudicating the following benefits are covered: Temporary Protected Status (TPS), Deferred Enforced Departure (DED), benefits under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203), adjustment of status under the Cuban Adjustment Act, section 202 of NACARA (NACARA 202), and section 902 of the Haitian Refugee Immigration Fairness Act (HRIFA), T and U visas, parole, and deferred action.

TERMINAL PERFORMANCE OBJECTIVE (TPO):

Given a field situation involving the adjudication of an application or petition for benefits under one of the specified humanitarian programs, the Adjudicator will identify the purposes, processes and eligibility requirements for the adjudication. The Adjudicator will also be able to identify certain unique aspects and benefits that derive from these programs, including employment authorization, renewal of status and petitioning for relatives.

ENABLING PERFORMANCE OBJECTIVE (EPOs):

EPO#1: Identify definitions relating to humanitarian programs.

EPO#2: Identify the purpose of the Temporary Protected Status (TPS) program, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under this classification.

EPO#3: Identify the purpose of the Deferred Enforced Departure (DED) designation, and the process by which DED is designated.

EPO#4: Identify the purpose of the benefits program under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203) program, as well as the

eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under this classification.

EPO#5: Identify the purpose of the Cuban Adjustment Act (CAA) provisions, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under the CAA.

EPO#6: Identify the purpose of the benefit programs under Section 202 of NACARA (NACARA 202) and Section 902 of the Haitian Refugee Immigrant Fairness Act (HRIFA 902), as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under these provisions.

EPO#7: Identify the purposes of the T and U Nonimmigrant Classifications, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under these classifications.

EPO#8: Identify the purposes and different types of parole, as well as the eligibility criteria, evidentiary requirements and procedures for adjudicating a request for parole.

EPO#9: Identify the purpose of Deferred Action, as well as factors that may warrant a grant of deferred action.

STUDENT SPECIAL REQUIREMENTS:

Read pages 358-365 in *Immigration Law and Procedure in a Nutshell, 6th Edition,* by David Weissbrodt and Laura Danielson.

NOTE: Like other reference guides and textbooks, *Immigration Law and Procedure in a Nutshell* is written by a private author, and is **not** a U.S. Government publication. Accordingly, any opinions expressed in the text are those of the author, and not those of U.S. Citizenship and Immigration Services or the Department of Homeland Security. This text is being used to provide background information on the law to the student, in order that the student may apply that background to the duties performed by USCIS adjudicators.

Additionally, the Fifth Edition of this book was published in 2005. Since the immigration law and policy is constantly changing and evolving, it is always important to verify whether there have been changes to the law or procedures when using this or other reference materials.

METHOD OF EVALUATION:

Written examination/Multiple choice - open book

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OUTLINE OF INSTRUCTION

I. INTRODUCTION

USCIS administers various humanitarian and legislative programs that provide benefits and protection for eligible applicants. Such programs include Temporary Protected Status (TPS), Deferred Enforced Departure (DED), benefits under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203), adjustment of status under the Cuban Adjustment Act, section 202 of NACARA (NACARA 202), and section 902 of the Haitian Refugee Immigrant Fairness Act (HRIFA), T and U visas, parole, and deferred action.

Each program and benefit has specific eligibility criteria, an application or petitioning process, and adjudication guidelines. Each program may also carry ancillary benefits, or may have unique aspects in terms of duration or renewal of status. Among other things, eligibility for protection under some of these programs may impact eligibility for employment authorization or for petitioning on behalf of relatives. Many thousands of applicants and petitioners are covered under these categories, making these programs a substantial segment of USCIS' work. Adjudicators need to understand the eligibility requirements for these adjudications, as well as the protection generally afforded to those covered under these programs, as the individual's status or eligibility may impact other pending petitions or applications filed by the individual (or on their behalf).

II. PRESENTATION

A. EPO #1: Identify definitions relating to humanitarian programs.

1. The Course requires a thorough understanding of the following:

TERM	DEFINITION	REFERENCE
Adjustment of status	The formal act of USCIS, or of an immigration judge, changing an alien's status from whatever it had been to the status of an alien lawfully admitted for permanent residence.	INA § 245(a) and (i), Pub. L. 105-100, Pub. L. 105-277 and numerous other provisions that authorize adjustment of status
Advance parole	The decision of USCIS, in advance of an alien's travel, that it is likely that the alien will be paroled, if the alien arrives at a port-of-entry into the United States. The decision is evidenced by issuance of a Form I-512.	INA § 212(d)(5)(A); 8 C.F.R. § 212.5(f)
Alien	The term "alien" means any person not a citizen or national of the United States.	INA § 101(a)(3)
Cuban Adjustment Act	The informal name that has come to be used to refer to Public Law 89-732, as amended. Note that, unlike some Public Laws, Public Law 89-732 does not specify the use of this term as a reference to the Act.	Pub L 89-732, as amended
Form I-131	Application for Travel Document	8 C.F.R. § 103.7(b)
Form I-485	Application to Register Permanent Residence or Adjust Status	8 C.F.R. § 103.7(b) and Part 245
Form I-485 Supplement B **Form I-485 Supplement C**	NACARA Supplement to Form I-485 Instructions HRIFA Supplement to Form I-485 Instructions	8 C.F.R. § 103.7(b) and Part 245.13 8 C.F.R. § 103.7(b) and § 245.15
National of the United	The term "national of the United States"	INA § 101(a)(22)

States	means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.	
Parole	The DHS decision, as a matter of discretion, to permit an applicant for admission to come into the territory of the United States free of formal custody, but without having been admitted.	INA § 212(d)(5)(A)
Parolee	An applicant for admission who has been paroled into the United States under INA § 212(d)(5)(A)	
Form I-512	The DHS Form issued to an alien as evidence that the alien's request for advance parole has been granted.	8 C.F.R. § 212.5(f)
Form I-765	Application for Employment Authorization	8 C.F.R. § 103.7(b) and Part 274a subpart B

B. EPO #2: Identify the purpose of the Temporary Protected Status (TPS) program, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under this classification.

1. INA § 244 allows the Secretary of Homeland Security to designate certain countries, or parts of countries for Temporary Protected Status (TPS).

   a. Nationals of designated countries, or aliens having no nationality who last habitually resided there, are entitled to remain in the U.S. and can apply for work authorization.

   b. A TPS country designation is based on conditions in the country, such as ongoing armed conflict, environmental disasters, or other extraordinary and temporary conditions in the foreign state that prevent the safe return of its nationals or where the country is temporarily unable to handle their return.

   c. TPS is available only to eligible individuals who demonstrate the requisite continuous presence and residence in the United States as of certain dates applicable to their country designations.

2. Historical background

   a. Prior to 1990, there was no solid statutory authority to allow individuals who required protection for reasons other than persecution to remain in the United

States because of disruptive events in their home countries such as war, armed conflicts, earthquakes, floods, and other negative events or circumstances.

b. Nevertheless, it was often clear that the U.S. government did not require a person or groups of people to depart the United States for a country where they would be placed in danger, or when the home country could not absorb the return of its citizens or nationals.

c. Several special arrangements and temporary programs, such as parole, Extended Voluntary Departure (EVD), or Deferred Enforced Departure (DED) were used to provide for these aliens over the years.

   1) For example, administratively-created EVD was often applied to El Salvadorans when their country was engaged in pervasive civil strife and armed conflict in the 1980s.

   2) In the late 1980s and early 1990s, Congress debated a number of legislative proposals for "temporary safe haven," as it was then termed, to regularize the procedures for offering protection to individuals who could not safely return to their countries, but who were not covered by existing refugee, asylum or other immigration benefits law.

d. Temporary Protected Status was created by the Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, as a humanitarian program that originally authorized the Attorney General, and since the 2003 creation of the Department of Homeland Security (DHS), authorizes the Secretary of Homeland Security to designate countries or parts of countries, for TPS.

   1) Eligible nationals are permitted to remain in the United States until the conditions prompting the designation - such as armed conflict, environmental disasters, or other extraordinary and temporary conditions – no longer continue to be met.

   2) The TPS statute (INA § 244) and its implementing regulations at 8 C.F.R. §§ 244.1 – 244.20 provide the criteria, requirements and procedures for the following:

      a) the designation of countries by the Secretary for TPS,

      b) extension of country designations,

      c) termination of designations,

      d) eligibility criteria for individual applicants,

      e) mandatory bars to TPS,

f) filing of the initial Form I-821 TPS application,

g) re-registration,

h) fees,

i) approval and denial of TPS,

j) temporary benefits for *prima facie* eligible applicants,

k) work authorization and documentation for TPS beneficiaries,

l) withdrawal of TPS,

m) administrative appeals,

n) placement of aliens denied TPS (or from whom TPS has been withdrawn) in immigration removal proceedings,

o) requests for TPS in such proceedings,

p) TPS beneficiaries' travel abroad,

q) non-detention of TPS beneficiaries based on immigration status,

r) Congressional reports,

s) confidentiality of TPS applications,

t) and related subjects.

3. Designation of countries for TPS by Secretary of Homeland Security; Periodic review and termination or extension of designation

   a. INA § 244(b) provides criteria and general procedures for the Secretary of Homeland Security to designate countries for TPS, and to terminate or extend such designations.

      1) INA § 244(b)(1) states that, after consultation with appropriate agencies of the Government, the Secretary may designate any foreign state, or any part of such foreign state, for TPS purposes "only if:

         a) the [Secretary] finds that there is an ongoing armed conflict within the state, and due to such conflict, requiring the return of aliens who are nationals of

that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

b) the [Secretary] finds that –

(1) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(2) the foreign state is unable, temporarily, to handle adequately the return of aliens who are nationals of the state, and

(3) the country has officially requested designation under this subparagraph; or

c) the [Secretary] finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States."

b. An initial TPS country designation takes effect upon publication of a notice in the *Federal Register*, or at a later date specified in the notice, and remains in effect for not less than 6 months and not more than 18 months. INA § 244(b) (1-2).

1) The notice must also include an estimate of the number of nationals of the foreign state who are (or within the effective period of the designation, are likely to become) eligible for TPS. INA § 244(b) (1).

2) USCIS maintains a current listing of all designated countries on its website, www.uscis.gov, under the link to the description of the TPS program within "Services and Benefits."

c. At least 60 days before the end of the initial designation period, and any extended period of TPS designation, the Secretary must consult with appropriate agencies of the Government, review the conditions in the country or part of the country, and determine whether the conditions for such designation continue to be met. INA § 244(b) (3) (A).

1) If after the required agency consultations and periodic review, the Secretary determines that the foreign state no longer continues to meet the conditions for TPS designation, then the Secretary shall terminate the designation by publishing notice in the *Federal Register* of the termination decision, including the basis for the determination. INA § 244(b) (3) (B).

a) Such termination only applies to documentation and authorization (*e.g.*, Employment Authorization Documents (EADs), issued or renewed after the effective date of publication of the notice, or after a period permitted by the Secretary for an orderly transition. INA § 244(d) (3).

2) If the Secretary does not find that the foreign state no longer meets the conditions for designation, then the period of designation is extended for 6 months, or in the Secretary's discretion, for 12 or 18 months. INA § 244(b)(3)C).

3) Annual reports to Congress on the foreign states designated for TPS and the number of nationals receiving TPS, among other matters, are also required. INA § 244(i).

4. TPS for Individuals

a. Nationals of countries designated for TPS (or persons having no nationality but who last habitually resided in a designated country) may apply for TPS by filing Form I-821, "Application for Temporary Protected Status" with USCIS during the registration or re-registration periods for their particular countries, as specified in the *Federal Register* notices published by DHS at the time of designation, extension or termination.

b. All TPS applicants are also required to submit the I-765, "Application for Employment Authorization."

c. TPS application periods are also announced through press materials, on the USCIS website: www.uscis.gov., and through extensive public outreach efforts.

d. The Form I-821 provides detailed information on the application procedures, including necessary supporting documentation, biometrics (*e.g.*, fingerprints and photographs), and fees. This information is also covered in USCIS' TPS regulations at 8 C.F.R. §§ 244.6 – 244.9.

1) Individuals mail their applications to the address specified in the applicable *Federal Register* notice (and posted on the USCIS website), which is often the USCIS location colloquially called the "Chicago lockbox," where initial data is put into relevant systems and other processing steps occur.

2) The adjudication of TPS applications is now principally centralized at the USCIS Vermont Service Center.

e. Requirements in addition to being a national of a designated country (or a person having no nationality who last habitually resided in such country):

1) An alien seeking TPS must also demonstrate that he or she been continuously physically present in the United States since the effective date of the most recent designation;

2) The alien must demonstrate that he or she has continuously resided in the United States since such date as the Secretary may designate;

   a) Brief, casual and innocent departures from the United States by the alien will not defeat the alien's ability to show continuous presence so long as the terms of the definition of such departures in 8 C.F.R. § 244.1 is met. INA § 244(c) (4).

3) The alien must be admissible as an immigrant;

   a) The alien is exempt from the grounds of inadmissibility covering public charge, labor certification, and certain immigration document requirements. *See* INA § 244(c) (2) (A) (i); 8 C.F.R. § 244.3(a).

   b) Except for certain specified grounds, the Secretary may grant waivers of the other grounds of inadmissibility for humanitarian purposes, to assure family unity, or when a waiver is in the public interest. INA § 244(c) (2) (A) (ii); 8 C.F.R. § 244.3(b).

4) The alien is not subject to the mandatory, statutory bars to TPS;

5) The alien registers for TPS during an appropriate registration period as established by DHS. INA § 244(c) (1) (A); 8 C.F.R. §§ 244.1-244.9.

5. Waivers of Inadmissibility and Ineligibility

   a. Waivers may not be granted for certain criminal and drug-related grounds of inadmissibility (*see* INA §§ 212(a)(2)(A)(i), (2)(B) and (2)(C)); or for certain grounds related to national security, terrorism, genocide, or Nazi persecution (*see* INA, §§ 212(a)(3)(A-E)). *See* INA § 244(c)(2)(A)(iii); 8 C.F.R. § 244.3(c).

   b. In addition, an alien is statutorily ineligible for TPS if:

      1) The alien has been convicted of any felony or two or more misdemeanors committed in the United States,

      2) the alien is described in the bars to asylum at INA § 208(b)(2)(A):

         a) a persecutor of others;

         b) an alien convicted of a particularly serious crime who is a danger to the community;

c) an alien for whom there are serious reasons for believing that he or she has committed a serious nonpolitical crime outside the United States prior to arrival;

d) the alien is a danger to the security of the United States;

e) the alien falls within the terrorism-related grounds in INA § 212(a)(3)(B) and § 237(a)(4)(B) that are cross-referenced within the asylum bars of INA § 208(b)(2)(A)(v); or

f) the alien was firmly resettled in another country prior to arriving in the United States. *See* INA § 244(c)(2)(B); 8 C.F.R. § 244.4(b).

6. TPS applicants who demonstrate that they are *prima facie* eligible for the benefit can obtain "temporary treatment benefits" prior to and during the registration period for their country. 8 C.F.R. § 244.5.

   a. Such benefits include a temporary EAD, for example. After being granted TPS, the alien receives an EAD (or his temporary EAD is extended), if one is requested, and the alien cannot be deported or detained while in TPS status, among other limited benefits. *See* INA §§ 244(d-f); 8 C.F.R. § 244.10 and 244.12.

   b. A TPS grant does not entitle the beneficiary to travel abroad, but USCIS may, in its discretion, permit such travel based upon the alien's submission of an application for advance parole. INA § 244(f)(3); 8 C.F.R. § 244.15.

   c. Failure to obtain advance parole before travel abroad may result in the withdrawal of TPS and/or removal proceedings against the alien. 8 C.F.R. § 244.15(b).

   d. For purposes of adjustment to permanent resident status or change/extension of status under other provisions of immigration law, an alien's period as a TPS beneficiary is considered being in, and maintaining, lawful, non-immigrant status. INA § 244(f)(4).

7. If the TPS application submitted to USCIS is denied, the alien may appeal to the USCIS Administrative Appeals Office (AAO), provided that the basis for the denial was not one of the mandatory grounds of ineligibility or one of the grounds of inadmissibility that cannot be waived (*see above*). 8 C.F.R. § 244.10(c).

   a. A charging document placing the alien in removal proceedings may be issued if the ground(s) for removal would have rendered the TPS applicant ineligible for such status pursuant to one or more of those mandatory bars to TPS or unwaivable grounds of inadmissibility. 8 C.F.R. § 244.18.

b. The alien may seek *de novo* review of his application for TPS by an immigration judge during removal proceedings and may appeal the decision to the Board of Immigration Appeals (BIA) if the immigration judge denies TPS. *Id.*

8. TPS status may also be withdrawn from an alien. 8 C.F.R. § 244.14.

   a. Grounds for withdrawal include a determination that the alien was not, in fact, eligible at the time of grant for TPS or that he or she became ineligible thereafter.

   b. Failure to maintain continuous presence and failure to re-register, without good cause, can also be grounds for withdrawal. *Id.*

   c. The regulations also cover the circumstances in which appeal to the AAO is available for a withdrawal decision (*e.g.,* failure to re-register) and when charging documents shall, or may, be issued following a withdrawal decision. *Id.* at 244.14(b).

9. The regulations also provide procedures for annual registration of TPS beneficiaries during the pendency of a TPS country designation (8 C.F.R. § 244.17), for late initial registration (8 C.F.R. § 244.2(f)(2); for fee waivers (8 C.F.R. § 244.20); for termination of TPS after a country designation ends (8 C.F.R. § 244.19); and for confidentiality of an alien's TPS application and supporting documentation. When an extension or termination of a country designation occurs, the DHS *Federal Register* notice effecting that action normally provides procedures for TPS beneficiaries to follow to re-register and to obtain extensions (or new) EADs.

C. EPO #3: Identify the purpose of the Deferred Enforced Departure (DED) designation, and the process by which DED is designated.

1. Deferred Enforced Departure, or DED, is an action taken by the President based on his power to conduct foreign relations. Often, through DED the President has provided temporary protection from removal granted to nationals of certain countries.

2. DED is not contained within the Immigration and Nationality Act (INA), and it is not an immigration status, as is TPS. DED is within the President's discretion and arises from his power to conduct foreign relations. The predecessor to DED was Extended Voluntary Departure (EVD), another non-statutory mechanism developed to offer humanitarian protection to groups of foreign nationals.

3. In 1990, DED was provided to Chinese nationals due to the crackdown on democracy activists in that country. *See* Executive Order 12711 (April 1990). Shortly afterward, the TPS statute was enacted. INA § 244.

4. Unlike TPS, there are no governing rules on which countries' nationals may be provided DED or the circumstances that should give rise to DED.

a. When the President decides to provide DED to certain nationals, he usually does so via an Executive Order or a Presidential Memorandum. *See, e.g.,* "Memorandum on Measures Concerning Certain Liberians In the United States," *issued by* President William J. Clinton to the Attorney General on September 28, 2000 *(directing the Attorney General to develop DED procedures for certain Liberians who had been in the United States since September 29, 2000).*

b. When the President directs the Secretary to provide DED to certain nationals, there are often exclusions for certain persons, such as aggravated felons or terrorists.

c. In addition, the implementing procedures for DED typically provide for registration, application for and issuance of Employment Authorization Documents (EADs), and certain other related measures.

d. The procedures are often announced in the *Federal Register* and through press and other public outreach materials issued by DHS, particularly USCIS.

e. Procedures for DED are often very country-specific, therefore it is important to be familiar with the notices, memoranda and other materials that apply to a particular country designated for DED.

f. Individuals may also continue to seek other immigration benefits for which they may qualify.

g. In the past, Persian Gulf Evacuees and nationals of China, El Salvador, Haiti, and Liberia have been provided DED.

D. EPO#4: Identify the purpose of the benefits program under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203) program, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under this classification.

1. Section 203 of NACARA provides that certain Salvadorans, Guatemalans, nationals of former Soviet Bloc countries, and their qualified relatives may apply for suspension of deportation or special rule cancellation of removal and, if granted, gain lawful permanent resident status.

   a. Applicants must first establish eligibility to apply for NACARA 203 relief.

   b. They then demonstrate that they are eligible for a grant of relief.

2. There are five categories of individuals who are eligible to apply for relief under NACARA 203:

   a. Registered ABC class members: the first group of individuals eligible to apply for NACARA relief is the group comprised of class members of the *American Baptist*

Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991) Settlement Agreement (*ABC)* who timely registered for *ABC* benefits. There are two categories of registered *ABC* class members who are eligible to apply:

1) A Guatemalan who:

   a) first entered the United States on or before October 1, 1990;

   b) registered for (*ABC* benefits), on or before December 31, 1991;

   c) has not been convicted of an aggravated felony; and

   d) has not been apprehended at time of entry after December 19, 1990.

2) A Salvadoran who:

   a) first entered the United States on or before September 19, 1990;

   b) registered for *ABC* benefits on or before October 31, 1991 (either by direct registration or by applying for Temporary Protected Status (TPS);

   c) has not been convicted of an aggravated felony; and

   d) has not been apprehended at time of entry after December 19, 1990.

b. Guatemalans and Salvadorans Who Filed for Asylum on or Before April 1, 1990. This group includes Guatemalan and Salvadoran nationals who filed a complete application for asylum, either directly with the INS or with the immigration court, on or before April 1, 1990, and who have not been convicted of an aggravated felony.

c. Nationals of Former Soviet Bloc Countries. An individual from a former Soviet bloc country who has not been convicted of an aggravated felony is eligible to apply for benefits under NACARA if each of the following criteria are met:

   1) Entered the United States on or before December 31, 1990;

   2) Filed an application for asylum on or before December 31, 1991; and

   3) At the time of filing was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

d. Qualified Family Members. Certain family members of the individuals described above are also eligible to apply for benefits under section 203 of NACARA.

1) The required family relationship must exist at the time that the parent or spouse described in the three categories above is granted suspension of deportation or special rule cancellation of removal, but the statute does not require that the relationship still be in existence at the time that the qualified family member is considered for relief.

2) Qualified family members are those that have not been convicted of an aggravated felony and fit into one of the following categories at the time the parent or spouse is approved:

a) Spouse;

b) Children (unmarried under 21 years of age, as defined at INA § 101(b)(1)) ; and

c) Unmarried sons or daughters (21 years of age or older).

d) **NOTE:** If the unmarried son or daughter is 21 years of age or older **at the time the parent is granted the benefit,** the son or daughter must have entered the US on or before 10/1/90.

e. Victims of Domestic Violence. Pursuant to the Victims of Trafficking and Violence Protection Act (VTVPA), certain aliens who have been battered or subjected to extreme cruelty by a spouse or parent who is or was a US citizen, lawful permanent resident, or NACARA beneficiary may apply for NACARA relief.

3. Eligibility for relief

a. If eligible to apply, all applicants must also independently establish eligibility for a grant of NACARA 203 relief.

b. Applicants must meet the following three basic eligibility criteria:

1) Continuous Physical Presence

a) The applicant must demonstrate that he or she has been continuously physically present in the United States for at least seven years preceding decision on the application.

b) Any absences from the United States during the seven-year period must be brief, casual, and innocent.

2) Good Moral Character. The applicant must demonstrate that he or she is or has been a person of good moral character during the seven-year continuous physical presence period.

3) Extreme Hardship

a) The applicant must demonstrate that his or her deportation or removal from the United States would result in extreme hardship to the applicant him or herself, or to the applicant's spouse, parent, or child who is a U.S. citizen or lawful permanent resident.

b) Registered *ABC* class members and Salvadorans who applied for asylum on or before April 1, 1990 are entitled to a rebuttable presumption of extreme hardship.

c. If the applicant satisfies the three basic eligibility requirements, he or she must also warrant a favorable exercise of discretion.

4. Legal Immigration Family Equity Act of 2000 Amendments (LIFE)

a. If an individual returns to the United States illegally after having been removed from the United States, or departed voluntarily while under an order of removal, deportation or exclusion, the individual will generally be subject to reinstatement of the prior order. 8 C.F.R. § 241.8.

b. However, under The LIFE amendments, an applicant who is otherwise eligible for relief under NACARA 203 is not barred from seeking such relief because the applicant is subject to reinstatement of a prior order of deportation or removal pursuant to INA § 241(a)(5).

E. EPO#5: Identify the purpose of the Cuban Adjustment Act (CAA) provisions, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under the CAA.

1. Public Law 89-732, as amended, known as the Cuban Adjustment Act (CAA), provides a "special" adjustment process for citizens and nationals of Cuba.

a. Congress enacted the CAA to create an exception to the rule that aliens from the Western Hemisphere could not obtain adjustment of status.

b. The CAA provides an alternative to adjustment under INA § 245, and since numerical limits do not apply, no immigrant visa petition is necessary to seek CAA adjustment.

2. Eligibility requirements

a. A most important factor to keep in mind – a person need not be a "refugee" in the strict sense that applies to asylum cases, to qualify for adjustment under the CAA. *Matter of Masson,* 12 I&N Dec. 699 (BIA 1968).

b. Also, adjustment under the CAA is available "notwithstanding" INA section 245(c)

1) Thus, crewman, overstays, and others barred by INA § 245(c) are eligible under CAA, even if an application under section 245 would have to be denied.

c. Formal policy guidance for adjudicating CAA cases is available at AFM 23.11.

3. Principal applicant – eligibility requires the alien to establish that he or she:

a. Is a native or citizen of Cuba

1) This requirement is disjunctive – one need not be a native *and* citizen of Cuba

2) So, someone born in Cuba is eligible, even if the person is not a Cuban citizen

a) Example: If a person born in Cuba is a Haitian citizen, not a Cuban citizen, and moved, as a child, to Haiti, the person is still eligible for CAA adjustment as a "native" of Cuba. *Matter of Masson,* 12 I&N Dec. 699 (BIA 1968).

b) NOTE: Since birth in Cuba is an historical fact, a person born in Cuba as a Cuban citizen would still be eligible even if he or she gave up Cuban citizenship, or the Cuban Government took it away from the person.

c) NOTE: The U.S. Naval Base at Guantanamo is on Cuban territory, not U.S. territory. A person born at GTMO, therefore, is a native of Cuba.

3) Someone born *outside* Cuba is eligible, *if* the person is a Cuban citizen

a) Example: A person born outside Cuba may be a Cuban citizen if his or her parent(s) was (were) Cuban citizens when the person was born, and the person can establish by appropriate documentary evidence that he, too, is a Cuban citizen.

b) This evidence may consist of:

1. a Cuban passport OR

2. a certificate of birth outside Cuba issued by the Cuban civil registry OR

3. a consular certificate of birth outside Cuba, issued by a Cuban consulate in the country of birth and showing that the person was born in that consular district country to at least one Cuban parent. *Matter of Vasquez*, A97 918 826 (AAO July 31, 2007)

b. Inspected and then either admitted or paroled into the US after January 1, 1959 (that is, on January 2, 1959, or any later date)

1) But: If the alien was paroled on January 1, 1959, but later was again inspected and paroled after that date, the alien is eligible. *Matter of Rodriguez,* 12 I&N Dec. 549 (INS 1967).

c. Physically present in the United States for at least one year

1) Statute does not specifically say that only physical presence *after* admission or parole counts

2) The long-standing agency interpretation has been that only post-parole or post-admission physical presence for one year meets the eligibility requirement

d. Has applied for adjustment of status under the CAA

e. Is eligible to receive an immigrant visa and is admissible as an immigrant

1) See II.E.7 of this outline concerning inapplicable grounds of inadmissibility and availability of waivers.

4. Spouse or child

a. In general, the spouse (or child) of a CAA applicant is also eligible for CAA adjustment, even if the spouse or child is not a native or citizen of Cuba, if the spouse (or child) establishes that:

1) The qualifying principal alien (spouse or parent of the applicant) obtained adjustment under the CAA

2) The spouse (or child) was inspected and admitted or paroled in the United States on January 1, 1959

3) The spouse (or child) has been physically present in the US for at least one year

4) The spouse (or child) is "residing with" the CAA applicant

a) This element is *not* the same as the concept of "accompanying or following to join" that applies to derivative beneficiaries of visa petitions under INA 203(d)

b) In particular, if the spouse (or child) meets these requirements, the spouse (or child) is eligible even if the requisite relationship *did not* exist when the principal alien obtained CAA adjustment. *Matter of Milian,* 13 I&N Dec. 480 (INS 1970).

c) Also, even if the spouses are still married, the non-Cuban spouse is *not* eligible if they are living separately. *Matter of Bellido,* 12 I&N Dec. 369 (INS 1967).

d) If the CAA applicant dies before the spouse adjusts, the non-Cuban spouse who "has resided" with the spouse will remain eligible for adjustment:

1. Until January 5, 2008, if the spouse died before January 5, 2006

2. For 2 years after the date of death, if the spouse died on or after January 5, 2006.

3. This provision for widow(er)s is from the amendment to the CAA adopted in section 823(a)(2) of Public Law 109-162.

5) The spouse (or child) must apply for adjustment of status under the CAA

6) The spouse (or child) must be eligible to receive an immigrant visa and is admissible as an immigrant

a) See II.E.7 of this outline concerning inapplicable ground of inadmissibility and availability of waivers.

b. Special VAWA provisions

1) The "residing with" requirement does *not* apply to a child if the child has been battered or subjected to extreme cruelty by the CAA principal applicant.

a) This provision for a battered child is from the amendment to the CAA in section 1509 of Public Law 106-386.

2) If the spouse has been battered or subjected to extreme cruelty by the CAA principal applicant, then:

a) If still married, the spouse remains eligible even if the spouse is not "residing with" the CAA principal. This provision for a battered spouse

who is still marred to the principal applicant is from the amendment to the CAA in section 1509 of Public Law 106-386.

b) If the marriage has ended, but the spouse shows a connection between the battering or extreme cruelty and the termination of the marriage, the spouse remains eligible for CAA adjustment:

1. Until January 5, 2008, if the marriage ended before January 5, 2006;

2. For 2 years after the termination, if the marriage ends on or after January 5, 2006.

3. This provision for a former spouse is from the amendment to the CAA adopted in § 823(a)(2) of Public Law 109-162.

5. A note about Parole

a. Only parole under INA § 212(d)(5)(A) qualifies as parole for purposes of CAA adjustment.

b. In an April 1999 Memorandum, and an August 1998 legal opinion, former INS suggested that a release under INA § 236 could also be considered a parole, for purposes of CAA adjustment

c. The Board of Immigration Appeals has rejected this interpretation in at least one unpublished decision. *Matter of Ortega-Cervantes,* A79 783 180, 2005 WL 649116 (BIA January 6, 2005)[1]

d. DHS/OGC is also reconsidering that aspect of the reviewing language in the 1999 Meissner memo, and the related 1998 legal opinion about release under INA § 236 being a form of parole;

e. USCIS adjudicators should *not* treat release under INA § 236 as a form of parole, for CAA purposes, without checking with USCIS Office of the Chief Counsel (Adjudications Law Division) about the status of that review

6. Whether to grant or deny CAA adjustment to an eligible applicant is a matter of USCIS discretion

a. Standard policies regarding exercise of discretion apply – weigh favorable factors against any negative factors that may exist

[1] The Board of Immigration Appeals reached the same conclusion in Matter of Francisco-Lorenzo, A97 302 010, 2006 WL 448347 (BIA January 19, 2006), but that case is once again before the BIA on remand from the Court of Appeals.

b. The conditions in Cuba that led to the enactment of the CAA, however, should count as an additional favorable factor. *Matter of Mesa,* 12 I&N Dec. 432 (INS 1967).

7. Certain grounds of inadmissibility do *not* apply to aliens seeking adjustment under the Cuban Adjustment Act

   a. Public charge does not apply to a CAA applicant. *Matter of Mesa,* 12 I&N Dec. 432 (INA 1967)

   b. Labor certification requirement in 212(a)(5) does not apply – not seeking admission as employment-based immigrant for which labor certification is required.

   c. Lack of immigrant visa (INA § 212(a)(7)) does not apply, since adjustment of status is in lieu of obtaining a visa

   d. Fact that the alien arrived at a place other than a designated port-of-entry, and is inadmissible under INA § 212(a)(6)(A)(i) (the last phrase in this section), does not apply. *See* Memorandum from Doris Meissner, INS Commissioner, to all Regional Directors, etc., "Eligibility for Permanent Residence under the Cuban Adjustment Act Despite having Arrived at a Place Other than a Designated Port-of-Entry (April 19, 1999).

      1) Alien must still have been inspected and either admitted or paroled.

      2) If the alien has *not* been admitted or paroled, then

         a) The alien is not eligible for CAA

         b) The alien is also inadmissible under the first part of INA § 212(a)(6)(A)(i)

8. Available waivers of inadmissibility

   a. Unlike INA § 245A (Legalization), NACARA, HRIFA, and several other "special" adjustment mechanisms, CAA does not have its own waiver provisions

   b. A CAA applicant, therefore, would need to seek any waiver of inadmissibility under the waivers that apply generally to adjustment applicants – INA §§ 212(g), (h), and (i), for example,

9. The effect of departure on a pending application

   a. Unlike certain adjustment applicants under INA § 245(a), USCIS regulations do *not* specify that departure from the US abandons a CAA application.

b. Rather, if the alien leaves the US, but without intending to abandon his residence in the US, and is inspected when the alien returns, and either admitted or paroled, the departure has no impact on CAA adjustment. 8 C.F.R. § 245.2(a)(4)(ii).

c. If the alien, however, returns without inspection and admission, the alien loses his or her CAA eligibility. *Matter of Martinez-Monteagudo*, 12 I&N Dec. 688 (INS 1968).

d. As a matter of prudence, a CAA applicant probably should seek advance parole before leaving, just to decrease the risk of being denied parole upon returning

10. When a successful applicant is deemed to have acquired LPR status

a. Generally, a successful CAA applicant is deemed to have acquired LPR status 30 months before the date the alien filed the CAA application, or the date of arrival, whichever is later.

b. Temporary absences, however, are *not* considered in determining the date of last arrival, so long as the alien did not intend to abandon his or her residence in the US, and is inspected upon returning and is either admitted or paroled. 8 C.F.R. § 245.2(a)(4)(ii)

c. Example: Alien arrives in the US on December 15, 2002, and is paroled. On January 2, 2004, the alien applies for CAA adjustment. The CAA application is granted on July 30, 2007. The alien is deemed to be an LPR as of December 15, 2002, since July 2, 2001, the date 30 months before application, is earlier than the arrival date.

d. Example: Alien arrives in the US on December 15, 2000, and is paroled. On January 2, 2004, the alien applies for CAA adjustment. The CAA application is granted on July 30, 2007. The alien is deemed to be an LPR as of July 2, 2001, the date 30 months before application, since it is later than the arrival date.

11. The repeal of the Cuban Adjustment Act

a. Congress has already enacted legislation repealing the Cuban Adjustment Act. However, the repeal will *not* take effect until the President has certified, under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity Act, Pub. L. 104-114, that a democratically elected Government has taken office in Cuba.

F. EPO#6: Identify the purpose of the benefit programs under Section 202 of NACARA (NACARA 202) and Section 902 of the Haitian Refugee Immigrant Fairness Act (HRIFA 902), as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under these provisions.

1. NACARA § 202

   a. Introduction. NACARA § 202 allows certain nationals of Nicaragua and Cuba who are physically present in the United States to adjust their status to that of a lawful permanent resident. NACARA was signed into law on November 19, 1997. The application period for this program began on June 22, 1998 and ended on March 31, 2000. Where INS/USCIS has jurisdiction, applicants were directed to file their applications at the Texas Service Center.

   b. Amendments to NACARA § 202 enacted as part of the Legal Immigration Family Equity Act (LIFE Act) in December 2000 provided an opportunity for aliens who had been made eligible for adjustment of status by that legislation to file a motion to reopen a NACARA 202 application that was previously denied by USCIS, if the case had not already been referred to EOIR, or to reopen their removal proceedings before EOIR if applicable. The deadline to file a motion to reopen before EOIR was June 19, 2001.

   c. Eligibility Requirements for adjustment of status under 8 CFR § 245.13 pursuant to NACARA § 202:

      1) To qualify for adjustment of status under this provision as a principal applicant, the applicant:

         a) Must be a national of Nicaragua or Cuba;

         b) Must be admissible to the United States under all provisions of INA § 212(a), other than sections 212(a)(4)(public charge),(5)(labor certification), (6)(A)(PWI), (7)(A)(valid immigrant visa), and (9)(B)(unlawfully present) which are specifically exempted by NACARA;

         c) Must have been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is filed (not counting absences totaling 180 days or less); and

         d) Must have filed an application on or before March 31, 2000 (or, if applicable, a motion to reopen on or before June 19, 2001)

2) To qualify for adjustment of status under this provision as a spouse, child, or unmarried son or daughter of principal who was adjusted under NACARA § 202, the applicant must meet all of the criteria noted above except that a spouse or child need not demonstrate that s/he was physically present in the United States for a continuous period beginning not later than December 1, 1995 – they must, however, be physically present in the United States at they time they file their adjustment application.

3) An alien who was at the time of application the spouse or child of a principal who adjusted (or was eligible to adjust) under NACARA 202 and was battered or subjected to extreme cruelty by such principal may also qualify for this benefit. Such applications were accepted between January 5, 2006 and July 3, 2007.

2. HRIFA § 902

a. Introduction. HRIFA § 902 provides relief in the form of lawful permanent residence to certain Haitian nationals and their Haitian national dependents. HRIFA was signed into law on October 21, 1998. The application period for principal applicants began on June 11, 1999 and ended on March 31, 2000. For qualifying dependent applicants, the application period for HRIFA adjustment remains open indefinitely. Where INS/USCIS has jurisdiction, applications must be filed at the Nebraska Service Center.

b. Amendments to HRIFA enacted as part of the Legal Immigration Family Equity Act (LIFE Act) in December 2000 provided an opportunity for aliens who had been made eligible for adjustment of status by that legislation to file a motion to reopen a HRIFA application that was previously denied by USCIS, if the case had not already been referred to EOIR, or to reopen their removal proceedings before EOIR if applicable. The deadline to file a motion to reopen before EOIR was June 19, 2001.

c. Eligibility Requirements for adjustment of status pursuant to HRIFA § 902:

1) To qualify for adjustment of status under 8 CFR § 245.15 as a principal applicant, the applicant:

a) Must be a national of Haiti who was present in the United States **ON** December 31, 1995;

b) Must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not counting any absence or absences totaling 180 days or less);

c) Must be admissible to the United States under all provisions of INA § 212(a), other than sections 212(a)(4)(public charge),(5)(labor certification), (6)(A)(PWI), (7)(A)(valid immigrant visa), and (9)(B)(unlawfully present) which are specifically excepted by HRIFA;

d) Must fall within one of the five following classes of persons:

1. Haitian nationals who filed for asylum before December 31, 1995;

2. Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

3. Haitian national children who arrived in the United States without parents and have remained without parents in the United States since arrival;

4. Haitian national children who became orphaned subsequent to arrival in the United States; and

5. Haitian national children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned.

6. (Note: For the last three ((3)-(5)) of these classes, the applicant must have been a child at the time of his or her arrival in the United States, and on December 31, 1995, but not necessarily at the time of his or her adjustment of status); and

e) Must have filed an application on or before March 31, 2000 (or, if applicable, a motion to reopen on or before June 19, 2001)

2) To qualify for adjustment of status under this provision as a spouse, child, or unmarried son or daughter of a principal who was adjusted under HRIFA, the applicant must be a national of Haiti who is admissible to the United States under all provisions not exempted by HRIFA noted above. Dependents must be present in the United States in order to apply for adjustment; otherwise there is no physical presence requirement for dependents who are spouses and children. Unmarried sons and daughters must be able to establish continuous physical presence since (but not necessarily on) December 31, 1995.

3) An alien who at the time of application is the spouse or child of a principal who is (or was) eligible for HRIFA adjustment and was battered or subjected to extreme cruelty by such principal may also qualify for this benefit.

3. Special features common to NACARA 202 and HRIFA

a. Relationship of adjustment application to certain orders.

1) An otherwise eligible alien present in the United States who is subject to a final order of exclusion, deportation, or removal may apply to USCIS for and be granted NACARA or HRIFA adjustment without having to file a separate motion to reopen, reconsider, or vacate such an order.

2) Persons with final orders, however, must apply for a stay of removal to prevent execution of the order while the adjustment application remains pending.

b. Other exemptions and waivers resulting from LIFE Act Amendments in 2000.

1) **Reinstatement.** INA § 241(a)(5), providing for the reinstatement of previous removal orders and barring any relief under the INA to aliens who reenter illegally after having been removed or having departed voluntarily under an order of removal, no longer applies to NACARA § 202 or HRIFA adjustment applicants.

2) **Waivers.** Authority granted to waive the grounds of inadmissibility set forth in INA § 212(a)(9)(A) (aliens previously removed) and INA § 212(a)(9)(C) (aliens unlawfully present in the United States after previous immigration violations). In granting such waivers, USCIS must follow the same standards used to grant consent to reapply for admission under INA §§ 212(a)(9)(A)(iii) or (C)(ii).

c. Other HRIFA Waiver Considerations.

1) HIV – the fact that an applicant was paroled into the United States from the U.S. Naval Base in Guantanamo Bay for the purpose of receiving HIV/AIDS treatment should be viewed as a significant positive factor in weighing the discretionary factors associated with an INA § 212(g) waiver application.

2) INA § 212(a)(6)(C) – regulations provide that adjudicators should take into account the general lawlessness, corruption, and other factors in Haiti at the time of the applicant's departure that may have induced the applicant to commit fraud or make willful misrepresentations (e.g. use false travel documents) in considering an INA § 212(i) waiver application.

d. Application/Jurisdiction

1) Aliens may request NACARA § 202 adjustment by filing Form I-485 filled out in accordance with the instructions contained on the I-485 Supplement B.

2) Aliens may request HRIFA adjustment by filing Form I-485 filled out in accordance with the instructions contained on the I-485 Supplement C.

3) USCIS is authorized to adjudicate NACARA § 202 and HRIFA applications in cases where:

   a) The alien has never been in proceedings,

   b) The alien has a final order over removal and has not filed a motion to reopen prior to the date of publication of the applicable interim rule in the Federal Register, or

   c) The alien is in immigration proceedings but those proceedings have been administratively closed by consent of the parties so that the alien may file an adjustment application with USCIS.

4) EOIR adjudicates these adjustment applications in cases where the alien is in proceedings (that are not administratively closed).

5) EOIR reviews NACARA § 202 and HRIFA adjustment applications de novo in cases that are referred to it from USCIS after a denial of the adjustment application. Note: If the applicant is subject to a final order, s/he is referred for a NACARA § 202 or HRIFA-only proceeding.

e. Ancillary Benefits

1) Employment Authorization

   a) Applicants for these benefits may request employment authorization by filing Form I-765.

   b) USCIS is not required to grant such authorization unless the related I-485 application has been pending for 180 days or more. It can be granted in less time where USCIS records contain evidence that the applicant meets certain *prima facie* eligibility requirements and there is nothing in the record that shows that the applicant is clearly ineligible for adjustment of status under the applicable statute.

2) Parole

   a) Regulations allow an otherwise-eligible alien who is outside the United States to submit a request for parole authorization accompanied by photocopies of the documents the alien intends to file in support of his or her claim for eligibility for adjustment of status if the parole authorization is granted (e.g. a copy of the I-485).

b) Parole may be authorized if upon review of the application for parole and related documents it is determined that the application for adjustment of status is likely to be approved once it has been properly filed. The alien would be allowed to file the adjustment application after being paroled into the country. (Note: Only eligible HRIFA dependents residing abroad can avail themselves of this process at this point).

3) Advance Parole

a) If an applicant wishes to leave the United States before a decision is made on his or her adjustment application, the applicant must request advance authorization for parole by filing a Form I-131.

b) If an applicant leaves the United States without such advance authorization, his or her adjustment application will be deemed to have been abandoned. Any absence from the United States without an advance parole authorization issued prior to departure counts toward the 180-day aggregate time period that the applicant is allowed to be outside the United States.

G. EPO#7: Identify the purposes of the T and U Nonimmigrant Classifications, as well as the eligibility criteria, evidentiary requirements and procedures for adjudication of an application for benefits under these classifications.

1. The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. 106-386, was enacted to pursue the prosecution of traffickers and the protection of victims.

a. The legislation provides access to social services and benefits for some victims, creates stronger criminal penalties and enhanced sentencing for traffickers, and creates two new nonimmigrant classifications, the T and U visa.

b. The T visa allows victims of severe forms of trafficking in persons to remain in the United States and assist federal authorities in the investigation and prosecution of human trafficking cases.

c. The TVPA reauthorized the Violence Against Women Act (VAWA) and added the U visa for victims of other specific crimes.

d. The U nonimmigrant status is broader than the T nonimmigrant status, as it is intended to provide temporary status for individuals who are not U.S. citizens or lawful permanent residents but are victims of specific violent crimes. The U visa allows victims who assist in the investigation and prosecution of the criminal activity to remain in the United States.

2. T Nonimmigrant Status

a. The eligibility requirements for T nonimmigrant status are listed at INA § 101(a)(15)(T)(i):

   1) is or has been the victim of a severe form of trafficking in persons

   2) physical presence in the U.S., American Samoa, or Northern Mariana Islands on account of such trafficking

   3) compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking (or is under 18 years old)

   4) extreme hardship involving unusual and severe harm upon removal.

b. The VTVPA defines "severe forms of trafficking in persons" as:

   1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

   2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

c. Family members of a T visa applicant may also qualify for a T visa under INA § 101(a)(15)(T)(ii) so long as the relationship exists at the time of the application and at the time the derivative is admitted to the U.S.:

   1) Victims under 21 years of age may apply for derivative T visas for their spouses, children, parents and unmarried siblings under 18 years of age if necessary to avoid extreme hardship.

   2) Victims 21 and older can apply for derivative T visas for their spouses and children if necessary to avoid extreme hardship.

   3) Victim may apply for family member with his/her application or apply for family member later.

d. Applicants for T nonimmigrant status self-petition using Form I-914, which is adjudicated at the Vermont Service Center.

   1) There are 5,000 visas available each fiscal year for principals.

   2) Any ground of inadmissibility may be waived for T nonimmigrants except national security and terrorism-related grounds, international child abduction, and renouncing citizenship to avoid taxation.

3) To overcome heath and public charge grounds, the applicant must show that it is in the national interest to grant a waiver.

4) Additionally, for all other grounds of inadmissibility, the activities rendering the alien inadmissible must be caused by or incident to the victimization.

e. T nonimmigrant status confers several benefits.

1) The alien is provided with referrals to NGOs that would advise the alien regarding options while in the U.S. and resources available to the alien.

2) The alien also receives work authorization while in status.

3) Additionally, the alien becomes eligible for adjustment of status after 3 years in nonimmigrant status.

f. T nonimmigrant status is limited to 3 years by regulation.

1) It is not renewable, but may be extended if a law enforcement agency certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of activity relating to human trafficking.

2) Within 90 days of the expiration, the T nonimmigrant can apply for LPR status and can maintain T nonimmigrant status until the LPR application is adjudicated.

3) There is a 5,000 cap on adjustments of T nonimmigrants each year.

g. To adjust status, T nonimmigrants must:

1) Have 3 years of physical presence

2) Display good moral character

3) Show compliance with reasonable requests for assistance or extreme hardship involving unusual and severe harm.

3. U Nonimmigrant status

a. The eligibility requirements for U nonimmigrant status are listed at INA § 101(a)(15)(U)(i):

1) Applicant is the victim of a qualifying crime

2) Applicant suffered substantial physical or mental abuse as a result of having been a victim of the crime.

3) Applicant possesses information about the crime (or in the case of a child under age 16, the parent, guardian, or "next friend" possesses such information)

4) Applicant (or in the case of a child under age 16, the parent, guardian, or "next friend") has been, is being, or is likely to be helpful to authorities in the investigation or prosecution of the crime (certification from official required)

5) The qualifying crime occurred in the U.S. or violated U.S. law.

b. To be eligible, applicants for a U visa must have a certification from a specified government agency that s/he is being helpful, has been helpful, or is likely to be helpful to the investigation or prosecution of the criminal activity.

c. Family members of a U visa applicant may also qualify for a U visa under INA § 101(a)(15)(U)(ii). These family members include the applicant's spouse and children and, if the applicant is under 21, his or her parents and unmarried siblings under 18 years of age on the date on which the alien applied for U nonimmigrant status.

d. The U nonimmigrant status specific crimes are listed at INA § 101(a)(15)(U)(iii):

1) Rape

2) Torture

3) Trafficking

4) Incest

5) Domestic violence

6) Sexual assault

7) Abusive sexual contact

8) Prostitution

9) Sexual exploitation

10) Female Genital Mutilation

11) Being held hostage

12) Peonage

13) Involuntary servitude

14) Slave trade

15) Kidnapping

16) Unlawful criminal restraint

17) False imprisonment

18) Blackmail

19) Extortion

20) Manslaughter

21) Murder

22) Felonious assault

23) Witness tampering

24) Obstruction of justice

25) Attempt/conspiracy/solicitation to commit any of the above

26) Or any similar activity in violation of Federal, State, or local criminal law

e. Applicants for U nonimmigrant status self-petition using Form I-918.

1) Applications are processed at the Vermont Service Center, and there are 10,000 visas available each fiscal year for principals.

2) INA § 212(d)(14) provides authority to waive any ground of inadmissibility for U nonimmigrants, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings, if it is in the public or national interest.

f. U nonimmigrant status confers several benefits. The alien receives work authorization while in status and becomes eligible for adjustment of status after 3 years in nonimmigrant status.

g. Aliens granted U nonimmigrant status may remain in the United States for a period of up to four years, with possible extensions upon certification by a law enforcement agency investigating or prosecuting the criminal activity that the alien's presence is required to assist in the investigation or prosecution.

h. An alien holding U nonimmigrant status becomes eligible for adjustment of status to that of a permanent resident if:

1) The alien has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant; and

2) DHS determines that the alien's continued presence in the United States is justified on humanitarian grounds, to ensure the family unity, or is otherwise in the public interest.

H. EPO#8: Identify the purposes and different types of parole, as well as the eligibility criteria, evidentiary requirements and procedures for adjudicating a request for parole.

1. Parole is the discretionary authorization for an alien to enter or remain in the physical territory of the United States without being admitted. USCIS, CBP and ICE have the authority to grant parole under § 212(d)(5) of the INA, "for urgent humanitarian reasons or significant public benefit."

a. Parole is granted for a temporary period of time, and generally will terminate at the expiration of the time for which parole was authorized, or upon the individual's departure from the US. *See* 8 C.F.R. § 212.5(e).

b. However, DHS may revoke parole at any time if "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." *See* 8 C.F.R. § 212.5(e).

c. A parolee may apply for re-parole, which refers to an extension of parole, or the granting of parole to an alien previously paroled into the United States. Once parole is terminated or revoked, the alien will be restored to the status he or she had before parole was granted.

d. Parolees may be subject to certain terms and conditions, such as periodic reporting requirements, as deemed appropriate by the adjudicating official. *See* 8 C.F.R. § 212.5(c) and (d).

e. A parolee may file an application for employment authorization under 8 C.F.R. § 274a.12(c)(11).

2. The types of parole authority that may be exercised under INA § 212(d)(5) include:

a. **Advance Parole.** Advance parole means the advance authorization, prior to the alien's departure from the United States, of an inadmissible alien for parole upon return to the United States. It may be used for aliens residing in the United States other than lawful permanent residents who have an unexpected need to travel and return, and whose conditions of stay do not allow for readmission on return to the United States if they depart. An alien may obtain advance parole by filing Form I-131, Application for Travel Document, before traveling abroad.

b. **Humanitarian Parole.** Humanitarian parole means the parole of an alien who is outside of the country into the United States based on urgent humanitarian reasons or for significant public benefit. Humanitarian parole requests are submitted on Form I-131, Application for Travel Document, with appropriate filing fee. The Form I-131 may be submitted by the prospective parolee, a sponsoring relative, an attorney, or any other interested individual or organization. Additionally, Form I-134, Affidavit of Support, is needed to assure that applicant will not become a public charge. All requests for humanitarian parole are filed with the USCIS Refugee, Asylum, and International Operations (RAIO).

c. **Non-Port of Entry Parole.** Parole authorized for an applicant for admission encountered inside the United States, such as an alien who is inadmissible under INA § 212(a)(6)(A)(i), or who is present without admission .

d. **Overseas Parole.** Parole authorized abroad for those aliens arriving under special legislation or international migration agreements. Examples of special parole programs include the Cuban and Haitian Entrant Program and the Moscow Refugee Parole Program.

e. **Parole for Deferred Inspection.** Parole authorized at a port of entry for the purpose of continuing the inspection of the alien at a later date.

f. **Parole for Law Enforcement Purposes.** Parole for law enforcement purposes means the parole, advance parole, or re-parole of an alien into the United States at the request of a law enforcement agency (LEA). LEAs generally file parole requests to allow aliens to be present in the United States to serve as witnesses or informants. LEA requests for law enforcement parole are filed with the DHS/ICE Office of International Affairs.

g. **Port of Entry Parole.** Parole authorized at a port of entry as a result of an encounter at a port of entry, where advance authorization of parole has not been granted.

h. **Parole in Place.** INA§ 212(d)(5)(A) gives discretion to parole aliens applying for admission to the U.S. for urgent humanitarian reasons/significant public benefit. This is most frequently used to apply to an alien who is outside of the U.S. to come into the U.S. "Parole in place," however, allows parole to be granted to

aliens who are already physically present in the United States without inspection or admission. The key factor in these aliens' cases are that they are the spouse, child, or parent of 1) an Active Duty member of the U.S. Armed Forces, 2) an individual in the Selected Reserve of the Ready Reserve, or 3) an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve. "Parole in place" was intended to minimize periods of family separation and facilitate the adjustment of status of aliens who are family members of U.S. military members.

I. EPO#9: Identify the purpose of Deferred Action, as well as factors that may warrant a grant of deferred action.

1. Deferred action is a discretionary decision made by USCIS, or other DHS components, to not prosecute or initiate removal proceedings against a particular alien.

2. Deferred action is also described as "an act of administrative convenience to the government which gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14).

3. A grant of deferred action does not confer any immigration status on the alien.

4. An alien who has been granted deferred action may apply for employment authorization if he or she establishes economic necessity. *See* 8 C.F.R. § 274a.12(c)(14).

5. Although there is no precise formula for identifying which cases warrant deferred action, relevant factors to be considered, on a case-by-case basis, may include:

   a. Immigration status

   b. Length of residence in the US

   c. Criminal history

   d. Humanitarian concerns

   e. Immigration history

   f. Likelihood of ultimately removing the alien

   g. Likelihood of achieving enforcement goal by other means

   h. Whether the alien is eligible or is likely to become eligible for other relief

   i. Effect of action on future admissibility

j. Current or past cooperation with law enforcement authorities

k. Honorable US military service

l. Community attention

m. Resources available to DHS

6. For additional information regarding Deferred Action, *see* Meissner, Comm., Memo, HQOPP 50/4, Exercising Prosecutorial Discretion (Nov. 17, 2000).

III. SUMMARY

Benefits and protection provided under the programs discussed in this course constitute a significant portion of the Agency's workload. Adjudicators will encounter these cases either through direct adjudication of benefit applications, or through the adjudication of related benefits. Each program and benefit has specific eligibility criteria, an application or petitioning process, and adjudication guidelines. For these reasons, it is important for all Adjudicators to understand the purposes, procedures and eligibility requirements for these programs.

IV. APPLICATION

A. Laboratory

1) Name two country conditions that may be considered for TPS designation.

2) What do the initials "TPS" stand for? What form is used to apply for this status? Where is the adjudication of TPS applications now principally located?

3) How does Deferred Enforced Departure differ from other benefits that the USCIS administers? Where in the INA is the definition for the term Deferred Enforced Departure located?

4) Name the five categories of individuals who are eligible to apply for relief under "NACARA" 203.

5) Must someone be a native of Cuba and a citizen of Cuba in order to qualify for adjustment under the Cuban Adjustment Act?

6) Is a request for advance parole required for the Cuban Adjustment applicant prior to travel?

7) How does the NACARA act differ from the HRIFA act, and what is the difference in the eligibility requirements and the evidentiary requirements for each act?

8) What form should be used by an alien requesting NACARA 202 adjustment? HRIFA 903?

9) Why was the TVPA Act of 2000 enacted? Name the nonimmigrant classifications to which it applies, and name the requirements that must be met for an alien classified as such to adjust status to that of a Lawful Permanent Resident.

10) What form is used to apply for T nonimmigrant status?

11) Define "parole" for immigration purposes, and name the seven different kinds of parole that the USCIS may be authorized to grant. What section of the INA governs the parole authority given to USCIS

12) Which USCIS branch has the authority to adjudicate "requests for humanitarian parole"?

13) Of those paroles USCIS has the authority to grant, what two categories do they fit within?

14) What is "deferred action," and would those granted be permitted to work? What immigration status does "deferred action" confer?

B. Practical Exercises

1. None

V. REFERENCES

A. INA §§ 101(a)(3), (15)(T), (15)(U), (22)

B. INA §§ 212(a), 212(d)(5)

C. INA § 236

D. INA § 244

E. INA § 245

F. 8 C.F.R. § 212.5, and Parts 244 and 245

G. Nutshell
- Chapter 6 §6-22, 6-23 (T & U visas)
- Chapter 9 §9-3.1(g) (parole)
- Chapter 10 §§10-2.5 and 10-2.6 (TPS & NACARA)

H. Internal USCIS *"National TPS National Standard Operating Procedures Manual," (SOP),* dated August 28, 2003 [Note: Researchers should always check with the USCIS TPS program managers for updates or later editions of these SOPs, as they are frequently revised to accommodate procedural modifications]

I. Internal USCIS *"Vermont Service Center's Standard Operating Procedures – Application for Temporary Protected Status (Form I-821),"* dated May 2, 2007 [See note above]

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Office Name
Field Office Address
City, State ZIP

U.S. Citizenship and Immigration Services

Date

[A NUMBER]
[RECEIPT NUMBER]

Name
Address
City, State ZIP

DECISION

Dear First/Last Name:

On [DATE], you submitted Form I-131, Application for Travel Document, with this U.S. Citizenship and Immigration Services (USCIS) office. You filed your Form I-131 to request parole in place under section 212(d)(5)(A) of the Immigration and Nationality Act (INA) as the Select One of an Select One the Select One.

INA section 212(d)(5)(A) authorizes USCIS, on behalf of the Secretary of Homeland Security, to parole into the United States any "applicant for admission." USCIS exercises this parole authority "on a case-by-case basis." Whether to grant parole is a matter of agency discretion. To exercise this discretion favorably, USCIS must find that parole is justified either by "urgent humanitarian reasons" or "significant public benefit."

The term "applicant for admission" includes any "arriving alien." INA section 235(b)(1)(A)(i); 8 CFR 1.2. But "applicant for admission" also includes an alien who is present in the United States without having been admitted or paroled. INA section 235(a)(1). By contrast, an alien who was admitted to the United States – whether as an immigrant or a nonimmigrant – and who has not left the United States, is not an "applicant for admission," even if the period of admission has expired.

We have carefully considered the facts of your case and we are unfortunately unable to extend parole in place to you at this time.

You submitted the following evidence in support of your application: [EVIDENCE THAT SHOULD BE SUBMITTED IS LISTED BELOW; DELETE THIS FORM FIELD AND SELECT/SUPPLEMENT EVIDENCE IN THE BULLET-LIST BELOW]

- Evidence of the family relationship;
- Evidence that the alien's family member is an Active Duty member of the U.S. Armed Forces, individual in the Selected Reserve of the Ready Reserve, or an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve, such as a photocopy of both the front and back of the service member's identification card (DD Form 1173);

- Two identical, color, passport style photographs;
- Evidence of any favorable discretionary factors that the requestor wishes considered.

Through section 212(d)(5)(A) of the Act, USCIS has the discretion, on a case-by-case basis, to parole for "urgent humanitarian reasons or significant public benefit" an alien applying for admission to the United States. Generally, parole in place is granted only sparingly. The fact that the individual is a spouse, child or parent of an Active Duty member of the U.S. Armed Forces, an individual in the Selected Reserve of the Ready Reserve or an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve, however, ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an individual.

Choose the appropriate sentences: The evidence shows that you were admitted to the United States on (date), as a (indicate immigrant or nonimmigrant class). There is no evidence you ever left the United States since that admission. Because you were already admitted to the United States, you are not an "applicant for admission" and, so, you are not eligible for parole in place - **OR-** You have not demonstrated that you merit an exercise of discretion on your behalf. [If the applicant does not merit an exercise of discretion, provide an explanation that lists and weighs the positive and adverse factors and explains why a criminal conviction or other serious adverse factors do not merit an exercise of discretion.]

Based on a review of the record, USCIS finds that you have not met your burden of proof in demonstrating that your application should be approved. Therefore, USCIS denies your Form I-131.

There is no appeal to this decision, but you may file a motion to reopen or reconsider. Your motion to reopen or reconsider must be filed on Form I-290B, Notice of Appeal or Motion, within 30 days of the date of this notice. You must mail your Form I-290B, along with the appropriate filing fee and other documentation in support of the motion, to the correct address. Do not mail your completed Form I-290B directly to this office.

You can find filing locations, the required filing fee amount, and more information about Form I-290B filing requirements on the USCIS Web site at http://www.uscis.gov/forms. You may also contact the National Customer Service Center toll free at 800-375-5283.

This decision does not prevent you from filing any petition or application in the future.

Sincerely,

[Signature Block]

cc:

2

Parole in Place (PIP)

Guidance & Frequently Asked Questions

Field Operations Directorate has received questions from the field regarding Policy Memorandum 602-0091 Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i).

The following Official FAQs have been vetted by Field Operations Directorate and the Office of the Chief Counsel (OCC).

PIP FAQ

1. If an applicant says they were "waived through" at the border, can we give them PIP; particularly if we cannot verify this claim?

    a. On occasion an individual will claim that he or she was admitted or paroled into the United States after being "waived in" by U.S. Customs and Border Protection (CBP) at a port-of-entry. See, e.g., Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010). Under Quilantan, it is not necessary for an applicant to show that the applicant's admission was, actually, lawful. It is enough to show that the applicant presented himself or herself at a port-of-entry for inspection as an alien, and that CBP allowed the applicant to enter the United States. However, an applicant who claims that he or she has been lawfully admitted must prove this claim by clear and convincing evidence. INA sec. 240(c)(2)(B) If USCIS concludes that the evidence that is presented does not meet this standard of proof, the individual will not be considered to be admitted or paroled. If the person can't meet the Quilantan standard of proof, as someone who was waived through, but they are eligible for PIP, then we should grant the PIP request. Otherwise, if we could verify their "waived through" claim, then they might satisfy the "inspected and admitted or paroled" requirement of 245(a) and probably would not need PIP.

2. If the parent of an active duty military member has been approved for a U visa and is awaiting availability, will a PIP request be accepted?

    a. Yes, an eligible military family member may file a PIP request.

3. Will the parolee need to withdraw his or her U visa?

    a. You should not advise an applicant to withdraw a U-visa as there are special provisions and legal advantages to being a holder of a U-visa.

4. If the family member of an active duty or former military member has been approved for DACA, will a PIP request be accepted and adjudicated?

    a. Yes. DACA is a "Deferred Action" on a removable alien. An approved DACA applicant has still not been "inspected and admitted or paroled" under 245(a) for Adjustment of Status (AOS) purposes. If approved for parole, that individual could then adjust status, if otherwise eligible. Thus, it is advantageous for him or her to file a PIP request.

5. If the family member of an active duty or former military member has a pending DACA request pending, should they withdraw it in order for them to be considered for PIP?

    a. No, there is no need to withdraw the DACA request.

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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

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 03, 2009

SUBJECT: Amended guidance regarding Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices

Background

On March 4, 2008, HQ Office of Field Operations issued memorandum titled, *Processing of Initial Parole or Renewal Parole requests presented by Natives or Citizens of Cuba to USCIS Field Offices*. This memorandum amends, in part, the guidance issued March 4, 2008, in regards to the following:

- The requirement to obtain the A-File prior to the adjudication of the parole (initial and/or renewal) request
- The validity period of approved parole (initial and/or renewal) requests is being changed from a one (1) year period to two (2) years
- The validity period of approved Employment Authorization Documents (EAD) filed pursuant to Title 8, Code of Federal Regulations (CFR), § 274.a.12(c)(11) is being changed from a one (1) year period to a maximum period of two (2) years, not to exceed the expiration date of the approved parole request

Requirement to obtain the A-File

If a parole request is received from a Cuban native or citizen, and it is determined that an A-File for the applicant already exists at some other location, then Field Offices must query the electronic systems (e.g. CIS, IDENT, ENFORCE, CCD, US-VISIT, etc.) that are regularly used to verify the identity and nationality of the applicant. If the identity and nationality of the applicant can be determined by querying the electronic systems, then, if the Field Office determines, in the exercise of discretion, that parole should be granted, evidence of parole (initial and/or renewal) status will be issued to the applicant, even though the A-File is not present at the time of adjudication of the parole request.

This guidance does not relieve Field Offices of the responsibility of requesting and obtaining the A-File. Requests for an existing A-File should continue in accordance with existing procedures. When the A-File has been received, Field Offices must include the application for parole along with all other related documentation in the A-File and review the entire record on a post audit basis.
In instances where the A-File for the applicant exists at some other location, the following steps for adjudicating the parole request should be followed:

1. Request the A-File

   A. Use Central Index System (CIS) for files located externally

   B. Use National File Tracking System (NFTS) for files located internally

2. Create a T-File and record the T-File in NFTS

3. Place the parole request and all other related documentation in the T-File

4. Adjudicate the parole request[1]

   A. For approvals:

      a) Complete the Arrival and Departure portion of the I-94
      b) Place a "Parole" stamp on the Arrival and Departure portion of the I-94 with the appropriate code (CH or CP)
      c) Include a copy of the entire, completed I-94 in the file
      d) Give the original, Departure portion of the I-94 to the applicant
      e) Retain the original, Arrival portion of the I-94
      f) Mail the original, Arrival portion of the I-94 to:
         DHS/ACS
         1084 S. Laurel Road
         London, Kentucky 40744

   B. For denials, include a copy of the denial notice issued to the applicant in the file

5. Hold the T-File until the A-File is received

6. Once the A-File is received, then consolidate the A-File and the T-File

7. Review the entire A-File within 30 days of receipt for derogatory information

[1] Instructions mentioned in Step 4, *Adjudicate the parole request*, are also applicable to parole adjudications that are completed when the A-file is present.

A. If no derogatory information is present, then route the A-File to the National Records Center (NRC)

B. If derogatory information is present, then take appropriate action for resolution

Validity period for paroles (initial and/or renewal)

The validity period for paroles (initial and/or renewal) is being changed from one (1) year to **two (2) years**. All approved parole (initial and/or renewal) requests presented by Cuban natives or citizens **must** be granted for a period of **two (2) years**.

Validity period for employment authorization

The validity period for an EAD filed pursuant to 8 CFR 274.a.12(c)(11) and issued on the basis of an approved parole (initial and/or renewal) request is being changed from one (1) year to **a maximum period of two (2) years, not to exceed the expiration date of the approved parole request**. All approved I-765 applications presented by Cuban natives or citizens on the basis of their parole status **must** be granted **until the expiration date of the parole status**.

Implementation instructions

USCIS offices must start implementing the instructions established in this memorandum immediately. Except for the changes mentioned in this memorandum, all other guidance as established in the March 4, 2008, memorandum remains unchanged.

Contact information

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

Distribution List:

Regional Directors
District Directors
Field Office Directors
National Benefits Center Director

Attachment:

A. Memorandum titled, Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices, *issued on March 4, 2008*

FOR OFFICAL USE

Attachment - A

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQ 70/10.10

Interoffice Memorandum

TO: Field Leadership

FROM: Tracy Renaud
Chief, Office of Field Operations

DATE: MAR - 4 2008

SUBJECT: Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices

This memorandum provides U.S. Citizenship and Immigration Services (USCIS) Field Offices guidance on processing of initial parole or renewal parole requests presented by natives or citizens of Cuba, and also processing of applications for employment authorization submitted in connection with such parole requests.

Background

General authority to accept and grant parole requests from natives or citizens of Cuba is found in policy memorandum HQCOU 120/17-P issued by the legacy Immigration and Naturalization Service (INS) on April 19, 1999 (**Attachment A**).

Under legacy INS, original parole requests were normally handled by immigration inspectors or special agents. With the reorganization of INS into the three Department of Homeland Security components of USCIS, CBP and ICE, each component has general parole authority. USCIS Field Offices must use the following guidelines upon receipt of initial parole or renewal parole requests from natives or citizens of Cuba.

Requests for initial parole

A native or citizen of Cuba who is present in the United States without having been inspected and admitted is eligible to apply for an initial parole at the USCIS field office having jurisdiction over the applicant's place of residence. Natives or citizens of Cuba need parole documentation in order to become eligible for benefits under the Cuban Adjustment Act, Public Law 89-732, November 2, 1966 (CAA). This parole request is without any fee and the applicant must make an INFOPASS appointment.

Natives or citizens of Cuba seeking ***initial parole*** must file their request by submitting a written request, Form G-325, 4 photos and attach copies of documentation proving Cuban nationality (original documents should be

seen, verified and returned at the time of adjudication). The applicant must sign the written request and all the supporting forms being submitted should be filled out completely.

All system checks must be conducted to determine if there is an existing A-file on behalf of the applicant. If an A-file exists, then the file must be requested or if no A-file exists, then a new file must be created. If there are multiple files pertaining to the applicant, all files should be consolidated. The A-file must be available for the adjudication of the initial parole request. The submitted G-325 must be verified for completeness and accuracy.

If the initial parole request is approved, the applicant must be issued an I-94. Approved initial parole requests must be noted on the I-94 as being based on either "urgent humanitarian reasons" or a "significant public benefit", must have the applicant photo affixed, and sealed using a DHS dry seal. The validity period of the initial parole must be **one (1) year**. This will allow natives or citizens of Cuba who have been physically present in the United States for at least one year to apply for adjustment of status under the CAA and seek employment authorization as an applicant for permanent residence while the adjustment of status application is pending.

Requests for renewal parole

A native or citizen of Cuba whose initial parole granted by USCIS is expiring or has expired is eligible to apply for a renewal parole at the USCIS Field Office having jurisdiction over the applicant's place of residence. This request is without fee and the applicant must make an INFOPASS appointment to file the request in person.

Natives or citizens of Cuba seeking ***renewal parole*** must file their request by submitting a written request, Form G-325, 4 photos with attached copies of documentation proving Cuban nationality and evidence of a grant of an initial parole (original documents should be seen, verified and returned at the time of adjudication). The applicant must sign the written request and all the supporting forms being submitted should be filled out completely.

All system checks must be conducted to check for the existing A-file on behalf of the applicant. Natives or citizens of Cuba whose initial parole was granted by either CBP or ICE may also apply to USCIS for renewal parole. In such instances, local USCIS Field Offices must obtain any files or information pertaining to the applicant from CBP or ICE to determine the applicant's eligibility for renewal parole. If there are multiple files on behalf of the applicant, all files should be consolidated. The A-file must be requested for the adjudication of the renewal parole request. The submitted G-325 must be verified for completeness and accuracy.

If the renewal parole request is approved, the applicant must be issued an I-94. Approved renewal parole requests must be noted on the I-94 as being based on either "urgent humanitarian reasons" or a "significant public benefit", must have the applicant photo affixed, and sealed using a DHS dry seal. The validity period of the renewal parole must be **one (1) year**.

Natives or citizens of Cuba on record as having been physically present in the United States long enough to be eligible to apply for adjustment of status under the CAA should be reminded that they may be eligible to apply for adjustment of status under the CAA. Applicants should also be provided with the applicable applications to facilitate adjustment of status filings.

Processing of applications for employment authorization

The Form I-765 eligibility categories for natives or citizens of Cuba submitting their employment authorization application in connection with a parole request should be either **8 CFR 274a.12(c)(11)**, an alien paroled into the United States temporarily for emergency reasons or reasons deemed strictly in the public interest pursuant to 8 CFR 212.5, or, in the case of a Mariel Cuban applicant, **8 CFR 274a.12(c)(18)**, an alien against whom a final order of deportation or removal exists and who is released on an order of supervision. The validity period of the employment authorization issued to natives or citizens of Cuba under the above-mentioned categories must be **one (1) year.**

For cases where the I-765 is filed with the required fee concurrently with the parole request, the original un-adjudicated application and the fee must be forwarded to the USCIS Lockbox facility in Chicago for receipting and data entry. If the local office waives the fee of the I-765 submitted with the Cuban parole, it should place a notation "FEE WAIVED" in the 'Remarks' block of the form with the initials of the officer authorizing the waiver and the date it was granted and adjudicate the application through ICMS. When adjudicating the I-765 application in ICMS, one of the mentioned eligibility categories for natives or citizens of Cuba must be selected rather than the Interim Approval mode so that the employment authorization is granted for a full year rather than 240 days.

Renewal of benefits

In order to avoid a gap in parole status and employment authorization, natives or citizens of Cuba will be allowed to apply for renewal parole and renewal employment authorization with USCIS up to 90 days before the expiration of their parole status.

Security and background checks

FBI fingerprint checks and Interagency Border Inspection System (IBIS) checks are required for the adjudication of initial and/or renewal parole requests. If these checks were never previously initiated or have expired, USCIS Field Offices must initiate these checks as soon as possible upon receipt of the parole request. The field offices should approve a parole request only after these checks have been completed and resolved favorably. FBI name checks are not required for the adjudication of initial and/or renewal parole requests.

If the applicant submits a request for parole (initial or renewal) without a concurrent I-765 application, the local office must schedule the applicant for 10-print capture (Code 1) at an ASC. If the applicant submits a request for parole (initial or renewal) concurrently with an I-765 application, the local office must schedule the applicant for a 10-print and biometrics capture (Code 3) at an ASC using the receipt number of the I-765 application on the biometrics appointment notice.

Implementation instructions and operational assistance

USCIS offices must start implementing the instructions established in this memorandum by April 1, 2008. USCIS offices should develop internal business practices in regard to tracking and processing such parole requests and associated applications for employment authorization.

For operational assistance regarding parole processing for natives or citizens of Cuba, the USCIS Miami Field Office is available to assist other USCIS Field Offices in processing CAA-related benefit cases and may be able to provide practical guidance in cases where the native or citizen of Cuba has to deal with multiple DHS components. Please contact Bruce Marmar (USCIS Miami Field Office POC for Cuban issues) via email.

Contact information

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

Attachment:

A. Eligibility for Permanent Residence Under the Cuban Adjustment Act Despite having Arrived at a Place Other than a Designated Port-of-Entry, *issued April 19, 1999*

Distribution:

Regional Directors
District Directors
Field Office Directors
National Benefit Center Director

FOR OFFICAL USE

Volume 3: Protection and Parole

PART M – Standard Operating Procedures For Processing Parole for Military Family Members

Chapter 1: Introduction

This Standard Operating Procedure (SOP) provides instruction on the use of parole in the case of an individual who is present in the United States without having been admitted or paroled, but who is the spouse, child, or parent of active duty personnel in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve and/or someone who previously served in the U.S. Armed Forces or Selected Reserve of the Ready Reserve. The basis for this discretionary authority is described in a November 15, 2013 Policy Memorandum.

Officers must keep in mind that the parole authority extends only to applicants for admission. If, upon an individual's most recent arrival in the United States, the individual was inspected at a port-of-entry and admitted, the individual is not an applicant for admission. The parole authority would not extend to that individual. A military dependent who has been admitted through a port-of-entry but who has violated that admission cannot be paroled, but may be eligible for deferred action or other favorable exercise of prosecutorial discretion.

Chapter 2: Initial Request

A request for parole is available for indivduals who are present in the United States without admission or parole and are the spouse, children, and parents of active duty personnel in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve and those who previously served in the U.S. Armed Forces or Selected Reserve of the Ready Reserve. In cases involving step-children and step-parents, officers are instructed to use the relationship criteria as required by Form I-130, Petition for Alien Relative. Applicants can request parole by mail or in person with or without an INFOPASS appointment at the USCIS Field Office with jurisdiction

over the applicant's place of residence. Military families on assignment in an area different from their permanent residence may have their parole request adjudicated by the office with jurisdiction over either location.

The USCIS Director determined, pursuant to 8 CFR 103.7(d), that a military dependent is not required to pay filing fees when requesting parole under the November 15, 2013, Policy Memorandum. The filing fee and biometrics fee are exempt.

To support the request, the applicant must submit:

- A completed Form I-131, Application for Travel Document (without fee);
    - Write "PIP Request"on the Form I-131 at the bottom of Part 2.
- Any available primary and/or secondary proof of identity and nationality, including, but not limited to a:
    - Birth certificate
    - Passport and/or Identification Card
    - Notarized affidavit(s)
    - School or medical records, etc.
- Evidence of the family relationship; including, but not limited to a:
    - Marriage certificate
    - Document of termination of prior marriage
    - Child's birth certificate
    - Military member's birth certificate with parents name
    - Defense Enrollment Eligibility Reporting System (DEERS), not required, but can be used if submitted)
- Evidence that the applicant's family member is an Active Duty member of the U.S. Armed Forces, member of the Selected Reserve of the Ready Reserve or an individual who previously served in the U.S. Armed Forces (DD Form 2 or DD Form 214) or the Selected Reserve or the Ready Reserve, such as a photocopy of both the front and back of the service member's military identification card (DD Form 1173);
- Two identical, color, passport style photographs; and

- Evidence of any additional favorable discretionary factors that the requestor wishes considered.

An applicant who has legal representation must submit a completed G-28, Notice of Entry as Attorney or Accredited Representative. However, the Field Office will not delay or deny a parole-in-place request for failure to submit a G-28 at the time of the applicant's appointment. The applicant may submit the G-28 while the request is pending.

Chapter 3: Reviewing the Form

Upon receiving document(s) related to the parole-in-place request, the USCIS Field Office will:

- Mark "Military PIP" with the appropriate code; G1 for Current Military or G2 for Former Military in red ink in the receipt block of Form I-131
- Check "Document Hand Delivered" box
- Write office code in "By" section
- Write or stamp date received
- Verify the address and contact information of the applicant
- Verify spelling of full name and any aliases
- Request or Create A-File
- Schedule the applicant for biometrics (Code 1) fee exempt, and
- Send an mail to NBCFIELD with "Receipting Only PIP I-131" in the subject line. Email page 1 of applicant's I-131 to the National Benefits Center (NBC) at NBCFIELD, using the coversheet, in order for the NBC to enter the application into Claims 3 and generate a receipt.

Upon receiving the PIP I-131, the NBC will:

- Receipt the I-131 into CLAIMS, and issue a receipt number for the I-131
- Print and mail a receipt notice to the applicant/attorney (note: receipt notices are generated overnight)
- E-mail back to the Field Office a copy of page 1 of the I-131 with a receipt number barcode, and

- Electronically transfer the application to the Field Office in National File Tracking System (NFTS).

After the Field Office receives the receipted I-131, the Field Office must:

- Electronically transfer in the receipt number in NFTS (for accountability purposes) and
- Physically and electronically consolidate the I-131 into the A file, including front page with barcode (For detailed guidance, please refer to the Record's Policy Manual, Part II-14 File Consolidations, Combinations and Disconnecting Consolidiations).

Note: *It is important to ensure the Form I-131 is transferred into the Field Office so the receipt can be located in the future, if necessary.*

Chapter 4: Preparing for Adjudication

A. Obtaining or Creating the A-File

Field Office staff should first search the Central Index System (CIS) and CLAIMS-3 to identify any existing A-file related to an applicant. Where an A-file is found and appears to be within the Field Office, staff will use the National File Transfer System (NFTS) to secure the file. For A-files in a different file control office (FCO), the Field Office will initiate a file transfer request. Since file transfer requests generally take one week to complete, the Field Office should wait this amount of time before commencing action on the parole-in-place request. In the interim, the Field Office will create a T-file or local working file to store the parole-in-place request. Where no A-file exists, a new file must be created for the applicant. If multiple A-files and/or T-files exist pertaining to the applicant, they should all be requested and consolidated upon receipt.

If after one week the requested A-file has not been received, the Field Office will notify their local records division and seek overnight delivery to secure the A-file. This will help ensure timely adjudication.

In accordance with the February 3, 2009, memorandum entitled, *"Amended Guidance Regarding Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices,"* a Field Office may adjudicate a parole request without the A-file. This policy will extend to the adjudication of parole-requests for non-Cubans provided the file request procedures have been followed.

B. BACKGROUND SECURITY CHECKS

Officers will follow the National Background Identity and Security Checks Operating Procedures (NaBISCOP) procedures for TECS checks and FBI Fingerprint results. [i]

Before adjudicating the parole-in-place request, the Field Office must complete and resolve the applicant's FBI fingerprint and TECS checks, including requesting a RAP sheet if IDENT, and reviewing certified court documents for any arrests.

No CIV/SIT check is required once approving a parole-in-place request, but may be in the future.

C. Determine Current Immigration Status of Applicant

The Field Office will ensure that the applicant is an applicant for admission – either an arriving alien or an alien present without admission or parole. Determine whether the applicant has ever been in deportation, removal or exclusion proceedings, as such proceedings may impact eligibility for parole-in-place.

In any case where an applicant is determined to be in removal proceedings, have a final order, or have deferred action by ICE at any point after commencement of removal proceedings, direct them to ICE to make their parole request. See the Memorandum of Agreement between USCIS, ICE, and CBP for the purpose of coordinating the concurrent exercise of parole authority under 212(d)(5) of the Act (9/28/08). CBP also expands upon the MOA in a December 2, 2013 memorandum entitled, "*Port of Entry Paroles and Re-Paroles*."

Chapter 5: Adjudication

Parole requests are adjudicated by officers. Absent serious adverse factors, such as a serious criminal conviction or other derogatory information, USCIS should, in the exercise of discretion, weigh heavily in favor of approval for parole-in-place. Requests should be authorized in one year increments. To the extent possible, all parole-in-place requests should be adjudicated within 30 days of receipt. While approval of a parole-in-place request is generally favored, factors supporting a denial include, but are not limited to, the following:

- Serious criminal conviction, such as an aggravated felony;
- Lack of prosecution where the applicant, despite ample opportunity, failure to provide necessary information, including biometrics; or
- Fraud in the parole-in-place application, or as reflected in any other agency or military records.

This is a discretionary adjudication. Officers should weigh all evidence.

A. Approvals

When a Field Office approves a parole-in-place request, staff will:

- Stamp the barcoded I-131 with the USCIS Approval stamp (by officer);
- Sign name (by officer);
- Complete Form I-94, Arrival and Departure Record, valid for one year from the date of approval;
- Place a "parole" stamp on the Form I-94 (arrival and departure portion) with the code CP (designating a public interest parole);
- Place one of two original passport photos in the top, left corner of departure portion (bottom section) of Form I-94, with a dry seal imprint;
- Include a copy of the entire (top and bottom portion) completed Form I-94 in the applicant's A-file or T-file;
- Give the departure portion (bottom section) of Form I-94 to the applicant;
- Retain the arrival portion (top section) of Form I-94; then
- Mail the Arrival portion (top section) of Form I-94 to:

  DHS/ACS
  1084 S. Laurel Road
  London, Kentucky 40744

B. Denials

When a Field Office denies a parole-in-place request, staff will:

Fully explain the basis for the denial decision in writing using the denial template. All denials must be reviewed by a supervisor or designee prior to notifying the applicant of the decision.

After concurrence with supervisory initials on file copy of denial by FOD stamp, staff should:

- Stamp the barcoded I-131 with a USCIS denial stamp;
- Retain a copy of the denial decision and evidence used to make the decision in the A-file or T-file;
- Mail the decision to the applicant;
- Mail a copy of the decision to the attorney/representative (if applicable);

- Review the November 7, 2011, Notice to Appear (NTA) Policy Memorandum, to see if any further action is warranted; and
- Consolidate the T-file with the A-file, if applicable, before forwarding to the appropriate location.

C. Back-end Updating

The Field Office will work with the NBC using the I-131 back-end procedure to update the Form I-131 in CLAIMS. Field Office staff will email the required information to the NBC to initiate the back-end update.

- The Field Office will send an email to the NBCFIELD mailbox, and place "PIP I-131" in the subject line. In the email, be sure to include the A number, applicant's name, and the contact information for the Field Office POC.
- Documentation that must be included with the email:
    - Completed Form I-131 Coversheet for Receipting/Back-end Updating with appropriate parole box checked (G1 for Current Military or G2 for Former Military);
    - Barcoded page 1 of Form I-131 with adjudication stamp;
    - Record of the completed TECS check and resolution, if any, and;
    - A copy of the I-94 issued.

When the documentation from the Field Office is received at the NBC, staff who are assigned to the backend update process will electronically update the appropriate system with the validity dates and decision rendered by the Field Office. An I-512L will not be created or sent to the applicant for parole-in-place, as this is not an Advance Parole request. The I-94 is the supporting evidence of the PIP approval, which is issued by the Field Office.

For more information on back-end processing, Field Office staff may call the NBC Field Office Help Line at 816-251-2490.[1]

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[1] FBI name checks are not required for the adjudication of a parole-in-place request.

PART D – CUBAN HAITIAN ENTRANT PROGRAM

Chapter 1: Expedited Processing of Employment Authorization and Evidence of Parole Status Requests (CHAP-Volume11-PartD-Chapter1.aspx)

Resources
Forms
CHAP Update Alert
Policy Archive
Standard Operating Procedures

Policy Manual - Volume 11: TRAVEL, EMPLOYMENT, & IDENTITY DOCUMENTS (http://connect.uscis.dhs.gov/workingresources/
-Volume11.aspx)

Volume 9 (CHAP-Volume9.aspx) Top of Page Volume 12 (CHAP-Volume12.aspx)

Resources

Forms
Form G-325A Biographic Information (http://www.uscis.gov/g-325a#)
Form I-765, Application for Employment Authorization (http://www.uscis.gov/i-765#)

CHAP Update Alert
USCIS procedural guidance regarding the Cuban Haitian Entrant Program has been added to CHAP.

Policy Archive
Amended Guidance Regarding Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices, 2/3/2009 (http://connect.uscis.dhs.gov/org/OFO/Documents/Processing%20Initial%20Parole%20or%20Renewal%20Parole%20CUBA.pdf#)
PM-602-0050: Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (http://connect.uscis.dhs.gov/workingresources/CHAP/Documents/PM-602-0050.pdf#)

Standard Operating Procedures
National Background, Identity, and Security Check Operating Procedures Handbook (NaBISCOP) (http://ecn.uscis.dhs.gov/team/fdns/National%20Security%20Branch/NaBISCOP/Wiki%20Pages/Home.aspx#)
RPM Part II-24: Record of Proceedings (ROP)-Assembling A-Files (http://connect.uscis.dhs.gov/org/ESD/RD/RPM/Pages/partII_records-proceedings.aspx#)

Updates

Date	Details
October 14, 2014 CHAP UPDATE ALERT	**New Content: Cuban Haitian Entrant Program** USCIS procedural guidance regarding the Cuban Haitian Entrant Program has been added to CHAP.

Volume 9 (CHAP-Volume9.aspx) Top of Page Volume 12 (CHAP-Volume12.aspx)

Current as of

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Office Name
Field Office Address
City, State ZIP

U.S. Citizenship and Immigration Services

Date

[A NUMBER]
[RECEIPT NUMBER]

Name
Address
City, State ZIP

DECISION

Dear First/Last Name:

On [DATE], you submitted Form I-131, Application for Travel Document, with this U.S. Citizenship and Immigration Services (USCIS) office. You filed your Form I-131 to request parole in place under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) as the Select One of an Select One the Select One.

INA section 212(d)(5)(A) authorizes USCIS, on behalf of the Secretary of Homeland Security, to parole into the United States any "applicant for admission." USCIS exercises this parole authority "on a case-by-case basis." Whether to grant parole is a matter of agency discretion. To exercise this discretion favorably, USCIS must find that parole is justified either by "urgent humanitarian reasons" or "significant public benefit."

The term "applicant for admission" includes any "arriving alien." INA section 235(b)(1)(A)(i); 8 CFR 1.2. But "applicant for admission" also includes an alien who is present in the United States without having been admitted or paroled. INA section 235(a)(1). By contrast, an alien who was admitted to the United States – whether as an immigrant or a nonimmigrant – and who has not left the United States, is not an "applicant for admission," even if the period of admission has expired.

We have carefully considered the facts of your case and we are unfortunately unable to extend parole in place to you at this time.

You submitted the following evidence in support of your application: [EVIDENCE THAT SHOULD BE SUBMITTED IS LISTED BELOW; DELETE THIS FORM FIELD AND SELECT/SUPPLEMENT EVIDENCE IN THE BULLET-LIST BELOW]

- Evidence of the family relationship;
- Evidence that the alien's family member is an Active Duty member of the U.S. Armed Forces, individual in the Selected Reserve of the Ready Reserve, or an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve, such as a photocopy of both the front and back of the service member's identification card (DD Form 1173);

- Two identical, color, passport style photographs;
- Evidence of any favorable discretionary factors that the requestor wishes considered.

Through section 212(d)(5)(A) of the Act, USCIS has the discretion, on a case-by-case basis, to parole for "urgent humanitarian reasons or significant public benefit" an alien applying for admission to the United States. Generally, parole in place is granted only sparingly. The fact that the individual is a spouse, child or parent of an Active Duty member of the U.S. Armed Forces, an individual in the Selected Reserve of the Ready Reserve or an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve, however, ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an individual.

Choose the appropriate sentences: The evidence shows that you were admitted to the United States on (date), as a (indicate immigrant or nonimmigrant class). There is no evidence you ever left the United States since that admission. Because you were already admitted to the United States, you are not an "applicant for admission" and, so, you are not eligible for parole in place - **OR-** You have not demonstrated that you merit an exercise of discretion on your behalf. [If the applicant does not merit an exercise of discretion, provide an explanation that lists and weighs the positive and adverse factors and explains why a criminal conviction or other serious adverse factors do not merit an exercise of discretion.]

Based on a review of the record, USCIS finds that you have not met your burden of proof in demonstrating that your application should be approved. Therefore, USCIS denies your Form I-131.

There is no appeal to this decision, but you may file a motion to reopen or reconsider. Your motion to reopen or reconsider must be filed on Form I-290B, Notice of Appeal or Motion, within 30 days of the date of this notice. You must mail your Form I-290B, along with the appropriate filing fee and other documentation in support of the motion, to the correct address. Do not mail your completed Form I-290B directly to this office.

You can find filing locations, the required filing fee amount, and more information about Form I-290B filing requirements on the USCIS Web site at http://www.uscis.gov/forms. You may also contact the National Customer Service Center toll free at 800-375-5283.

This decision does not prevent you from filing any petition or application in the future.

Sincerely,

[Signature Block]

cc:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Office Name
Field Office Address
City, State ZIP

U.S. Citizenship and Immigration Services

Date

[A NUMBER]
[RECEIPT NUMBER]

Name
Address
City, State ZIP

DECISION

Dear First/Last Name:

On [DATE], you submitted Form I-131, Application for Travel Document, with this U.S. Citizenship and Immigration Services (USCIS) office. You filed your Form I-131 to request parole in place under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) as the Select One of an Select One the Select One.

INA section 212(d)(5)(A) authorizes USCIS, on behalf of the Secretary of Homeland Security, to parole into the United States any "applicant for admission." USCIS exercises this parole authority "on a case-by-case basis." Whether to grant parole is a matter of agency discretion. To exercise this discretion favorably, USCIS must find that parole is justified either by "urgent humanitarian reasons" or "significant public benefit."

The term "applicant for admission" includes any "arriving alien." INA section 235(b)(1)(A)(i); 8 CFR 1.2. But "applicant for admission" also includes an alien who is present in the United States without having been admitted or paroled. INA section 235(a)(1). By contrast, an alien who was admitted to the United States – whether as an immigrant or a nonimmigrant – and who has not left the United States, is not an "applicant for admission," even if the period of admission has expired.

We have carefully considered the facts of your case and we are unfortunately unable to extend parole in place to you at this time.

You submitted the following evidence in support of your application: EVIDENCE THAT SHOULD BE SUBMITTED IS LISTED BELOW; DELETE THIS FORM FIELD AND SELECT/SUPPLEMENT EVIDENCE IN THE BULLET-LIST BELOW]

- Evidence of the family relationship;
- Evidence that the alien's family member is an Active Duty member of the U.S. Armed Forces, individual in the Selected Reserve of the Ready Reserve, or an individual who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve, such as a photocopy of both the front and back of the service member's identification card (DD Form 1173);

- Two identical, color, passport style photographs;
- Evidence of any favorable discretionary factors that the requestor wishes considered.

Through section 212(d)(5)(A) of the Act, USCIS has the discretion, on a case-by-case basis, to parole for "urgent humanitarian reasons or significant public benefit" an alien applying for admission to the United States. Generally, parole in place is granted only sparingly. **Choose the appropriate sentences:** The evidence shows that you were admitted to the United States on (date), as a (indicate immigrant or nonimmigrant class). There is no evidence you ever left the United States since that admission. Because you were already admitted to the United States, you are not an "applicant for admission" and, so, you are not eligible for parole in place **-OR-** You have not demonstrated that you merit an exercise of discretion on your behalf. [If the applicant does not merit an exercise of discretion, provide an explanation.]

Based on a review of the record, USCIS finds that you have not met your burden of proof in demonstrating that your application should be approved. Therefore, USCIS denies your Form I-131.

There is no appeal to this decision, but you may file a motion to reopen or reconsider. Your motion to reopen or reconsider must be filed on Form I-290B, Notice of Appeal or Motion, within 30 days of the date of this notice. You must mail your Form I-290B, along with the appropriate filing fee and other documentation in support of the motion, to the correct address. Do not mail your completed Form I-290B directly to this office.

You can find filing locations, the required filing fee amount, and more information about Form I-290B filing requirements on the USCIS Web site at http://www.uscis.gov/forms. You may also contact the National Customer Service Center toll free at 800-375-5283.

This decision does not prevent you from filing any petition or application in the future.

Sincerely,

[Signature Block]

cc: