



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

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Washington, DC 20536

MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES
GENERAL COUNSEL

FROM: Johnny N. Williams /s/
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Unlawful Presence

Purpose

This memorandum addresses issues relating to the 3- and 10-year bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (Act) and the decision to designate as a period of stay authorized by the Attorney General the entire period during which an alien has been granted deferred action by the Immigration and Naturalization Service (INS). This period of stay authorized by the Attorney General covers only the period during which deferred action is in effect. It does not eliminate any unlawful presence that accrued before the alien was granted deferred action.

The decision to designate deferred action as a period of stay authorized by the Attorney General does not in any way alter the nature of deferred action or the standards for granting it. See Chapter 17.7 of the INS's Detention and Deportation Manual. Note that Chapter 17.7(a) will be amended in the second paragraph to be consistent with the policy guidance provided herein.

Any adjustment of status application that is pending denial or has been denied because of

unlawful presence that the alien accrued while in deferred action status may be re-evaluated in light of this policy memorandum.

This memorandum also provides clarification on the period of stay authorized by the Attorney General with respect to applicants for temporary protected status (TPS) and deferred enforced departure (DED). These policies and procedures are effective immediately and will be included in the Adjudicator's Field Manual (AFM) in the next release of INSERTS.

For purposes of section 212(a)(9)(B)(ii) of the Act, and for no other purpose or benefit under the Act, the INS has designated the following as periods of stay authorized by the Attorney General:

- Current grants of voluntary departure;
- Current grants of deferred action in effect on or after April 1, 1997;
- Refugee status;
- Asylee status;
- Grants of withholding or deferral of removal under the United Nations Convention Against Torture;
- Legalization and special agricultural worker applications for lawful temporary residence which are pending through an administrative appeal;
- Grants of withholding or suspension of deportation, or cancellation of removal;
- Properly filed applications for temporary and permanent residence by Cuban-Haitian entrants under section 202(b) of Pub. L. 99-603 through administrative appeal;
- Current grants of TPS and DED. For TPS, the period of stay authorized by the Attorney General begins on the date a prima facie TPS application is filed with the Service, if that application is ultimately approved. If the TPS application is denied, or if the TPS application does not establish the alien's prima facie eligibility, unlawful presence begins accruing on the date the previous stay

authorized by the Attorney General expired. For DED, the period of stay authorized by the Attorney General takes effect beginning on the date specified in

the Executive Order. When TPS or DED are no longer in effect, the accrual of unlawful presence resumes;

- Properly filed, affirmative applications for adjustment of status under section 245 of the Act [including section 245(i)], and properly filed, affirmative registry applications under section 249 of the Act. The period of stay authorized by the Attorney General continues if the application is denied and renewed in proceedings, through review by the Board of Immigration Appeals. The alien must, however, be eligible to renew the denied application in proceedings and have a legal basis for renewing that application; and
- Certain pending applications for extension of stay or change of status.

Please direct any further questions relating to operational issues, through supervisory channels, to Kathy Dominguez in Headquarters Office of Field Services Operations at 202-616-1050 or Danielle Lee in Headquarters Office of Service Center Operations at 202-305-8010. Direct questions relating to policy issues, through supervisory channels, to Sophia Cox in Headquarters Office of Adjudications at 202-514-4754.

Memorandum for Regional Directors, et. al
Subject: Unlawful Presence

Page 4

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