

May 18, 2005

OFO:IPP:JBK

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE OPERATIONS

FROM: Acting Executive Director
Immigration Policy and Programs

SUBJECT: Indefinite Nonimmigrant Waivers

This memorandum clarifies that nonimmigrant waivers properly issued under section 212(d)(3)(B) of the Immigration and Nationality Act (INA) for an indefinite period of time are still valid.

Prior to April 1, 1998, section 212(d)(3)(B) nonimmigrant waivers could be approved for an indefinite period. Many aliens issued indefinite waivers also were issued Canadian Border Crossing Cards (BCCs) with the waiver endorsements on the cards. The issuance of Canadian BCCs ceased as of April 1, 1998, and, on or after April 1, 1998, section 212(d)(3) waivers were restricted to a validity period of 1 year. Waivers approved on or after December 2, 2002, have been granted for a maximum period of 5 years.

The supplementary information of 67 FR 71443, effective October 1, 2002, discussed the validity of indefinite waivers. The rule provided that an unexpired waiver of inadmissibility that was previously granted and documented on a BCC remained valid. Title 8, Code of Federal Regulations, Part 212.4(c)(3) states that:

“(iv) An authorization that was previously issued in conjunction with Form I-185, Nonresident Alien Canadian Border Crossing Card, and that is noted on the card may remain valid. Although the waiver may remain valid, the non-biometric border crossing card portion of this document is not valid after that date. This waiver authorization shall cease if otherwise revoked or voided. “

However, please note that an alien who was previously the beneficiary of a section 212(d)(3)(B) waiver but who now needs a nonimmigrant visa to travel to the United States, such as British Commonwealth residents of Canada or Bermuda, will need a new authorization issued pursuant to section 212(d)(3)(A) of the INA. Authorization is obtained through the nonimmigrant visa application process at an American Consulate. Furthermore, nationals of Visa Waiver Program (VWP) countries residing in Canada or

Bermuda who were previously exempt a visa and who may have obtained a section 212(d)(3)(B) waiver on a Form I-185, are not entitled to enter under the VWP and now must obtain a visa and new waiver authorization to enter the United States.

Although the present regulation is clear that indefinite waivers noted on BCCs remain valid, the regulation is less clear about the validity of an indefinite waiver if the alien no longer has a BCC in possession. Some BCCs have been taken from aliens, while other aliens have lost their BCCs. The key provision of 8 CFR 212.4(c)(3)(iv) relating to waiver validity is the language that "This waiver authorization shall cease if otherwise revoked or voided." Therefore, section 212(d)(3)(B) waivers that were granted prior to April 1, 1998, for an indefinite period of time continue to be valid until revoked or voided. Evidence of an indefinite waiver may be on Form I-185 (BCC) or Form I-194.

An alien who no longer has a BCC may use an original Form I-194 to travel. Also, an alien who no longer has a BCC or original I-194 may submit Form I-824 (Application for Action on an Approved Application or Petition) with filing fee of \$195.00 to the CBP office having jurisdiction over the CBP or INS office that made the original decision on the Form I-192 so that a duplicate Form I-194 may be issued. The duplicate Form I-194 may be used as evidence of an approved waiver to travel to the United States for purposes consistent with the waiver. Issuance of a duplicate Form I-194 requires posting or updating an IBIS lookout for the waiver beneficiary with information about the conditions of the waiver, using the MS-92 function in TECS, to ensure that the validity of documentation presented at a port of entry may be verified from a secure database.

Some waivers were issued on or after April 1, 1998, in error for an indefinite period. Those waivers are no longer valid, and holders should be advised to re-apply on Form I-192 for a new permission to enter. The field guidance issued February 28, 2003, by Johnny N. Williams, Executive Associate Commissioner, OFO/INS, relating to indefinite validity Forms I-194 being no longer valid is clarified to refer only to Forms I-194 issued on or after April 1, 1998.

A nonimmigrant waiver, including an indefinite waiver, should be revoked if new information shows that the alien is a continuing risk to society if admitted to the United States. The new information may be continued criminal activity or violations of administrative law. Aliens should not have waivers if they pose the slightest risk of committing terrorism, if there is risk of criminal activity, or risk of adding to the illegal alien population of the United States. Revocation is an adverse action initiated by the government and requires personal service notice as specified in 8 CFR 103.5a.

Questions regarding this guidance may be directed to John Klow at 612-725-3770.

Michael J. Hrinyak /S/