

September 20, 2005

(b) (6), (b) (7)(C), (b) (7)(E)

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
ACTING DIRECTOR, PRECLEARANCE

FROM: Acting Executive Director
Immigration Policy and Programs

SUBJECT: Unlawful Presence and Unlawful Status

This memorandum clarifies that unlawful presence in the United States does not accrue for any time when aliens are not physically present in the United States.

Aliens who have been unlawfully present in the United States for a period of more than 180 days and who again seek admission are inadmissible for 3 years (or 10 years if unlawfully present for 1 year or more). Section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA).

Section 212(a)(9)(B)(ii) of the INA states:

Construction of unlawful presence.- ... (A)n alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

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For additional information on determinations of unlawful presence and periods of authorized stay see the following link:

(b) (7)(E)

In addition, the Adjudicator's Field Manual 30.1(d) contains DHS policy regarding how to determine unlawful presence.

If there are any further questions, please contact (b) (6), (b) (7)(C)

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