Office of the Chief Counsel

U.S. Department of Homeland Security
20 Massachusetts Avenue, Room 4210
Washington, DC 20529-2120

U.S. Citizenship and Immigration Services

Daniel C. Horne
Jackson & Hertogs
Attorneys at Law
170 Columbus Avenue, Fourth Floor
San Francisco, CA 94133-5160

JAN 26 2009

Dear Mr. Horne,

Thank you for your September 4, 2008, letter concerning the effect of an alien's return to the United States as a nonimmigrant on the running of the alien's inadmissibility period under section 212(a)(9)(B) of the Immigration and Nationality Act (Act). An alien is inadmissible under section 212(a)(9)(B) if the alien "again seeks admission" within either 3 or 10 years of the alien's departure, depending on how much unlawful presence the alien had accrued. I write to confirm that the section 212(a)(9)(B) inadmissibility period begins to run with the initial departure from the United States. *Matter of Rodarte*, 23 I&N Dec. 905, 909 (BIA 2006). The inadmissibility period continues to run even if the alien is paroled into the United States or is lawfully admitted as a nonimmigrant under section 212(d)(3), despite his or her inadmissibility under section 212(a)(9)(B).

This interpretation will not aid an alien who returns to or remains in the United States unlawfully and USCIS cannot provide advice on whether an alien's activities could constitute a criminal offense under section 276 of the Act.

We have consulted with both the Department of State Visa Office and the Office of the Principal Legal Advisor for U.S. Immigration and Customs Enforcement about this issue and both offices concur with this interpretation.

Sincerely,

Lynden Melmed
Chief Counsel

Office of the Chief Counsel

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

U.S. Citizenship and Immigration Services

JUL 14 2006

David P. Berry, Esq.
Ronald Y. Wada, Esq.
BERRY, APPELMAN & LEIDEN LLP
353 San Francisco Street Suite 1350
San Francisco CA 94111

Dear Counsel:

Thank you for your August 23, 2005, letter concerning the effect of an alien's return to the United States as a parolee on the running of the alien's inadmissibility period under section 212(a)(9)(B) of the Immigration and Nationality Act (Act).

The section 212(a)(9)(B) inadmissibility period begins to run with the initial departure from the United States that triggers the three-year bar and continues to run even if the alien subsequently returns to the United States pursuant to a grant of parole under section 212(d)(5) of the Act. Thus, if the alien triggered the three-year inadmissibility period by leaving the United States on September 1, 2005, and there were no intervening periods of unlawful re-entry or unauthorized presence in the United States, the alien would no longer be inadmissible on or after September 1, 2008, even if the alien had been in the United States, under a grant of parole, during the inadmissibility period.

We have consulted with the Department of State Visa Office about this issue and the Visa Office concurs with this interpretation.

Please note that this interpretation will not aid an alien who returns to or remains in the United States unlawfully. Any alien already subject to a section 212(a)(9) bar who subsequently enters the United States unlawfully, or who enters lawfully (such as a parolee or temporary nonimmigrant under section 212(d)(3)) and remains beyond such authorization, may trigger a new, or extend an existing 212(a)(9) inadmissibility bar upon departure.

Sincerely,

Robert Divine

Robert Divine
Chief Counsel