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

Attachment - A

U.S. Department of Justice
Immigration and Naturalization Service

HQCOU 120/17-P

Office of the Commissioner

425 I Street NW
Washington, DC 20536

APR 19 1999

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL DISTRICT DIRECTORS
ALL CHIEF PATROL AGENTS
ALL OFFICERS-IN-CHARGE

FROM: Doris Meissner
Commissioner

SUBJECT: Eligibility for Permanent Residence Under the Cuban Adjustment Act Despite having Arrived at a Place Other than a Designated Port-of-Entry

This memorandum sets forth the Immigration and Naturalization Service (Service) policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255, note. This issue arises because many CAA applicants, in fact, arrive in the United States in an irregular manner. Section 1 of the CAA, however, requires that they must be "admissible." CAA § 1, 8 U.S.C. § 1255, note. If the inadmissibility ground that is based on an alien's having arrived at a place other than a port-of-entry, the Immigration and Nationality Act (INA) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), applies to CAA applicants, then many aliens who were formerly eligible for adjustment of status will no longer be eligible.

The policy of the Service is that the inadmissibility ground that is based on an alien's having arrived at a place other than a port-of-entry *does not* apply to CAA applicants. All Service officers adjudicating CAA applications will do so in accordance with this policy. So long as the applicant meets all other CAA eligibility requirements, it is contrary to this policy to find the alien ineligible for CAA adjustment on the basis of the alien's having arrived in the United States at a place other than a designated port-of-entry.

The Service will incorporate this policy into Service regulations as promptly as possible. The policy is, however, effective immediately. Service officers are not to await the publication of the intended rule before deciding CAA applications in accordance with this policy.

This policy is based on the rationale of the decision in *Matter of Mesa*, 12 I & N Dec. 432 (INS 1967). In *Matter of Mesa*, the Service held that the admissibility requirement of § 1 of the CAA must be construed generously, in order to give full effect to the purpose of the CAA. The decision noted that Congress was fully aware that many, and perhaps most, Cuban nationals were dependent on some forms of public assistance. Yet the purpose of the CAA would have been defeated, if the public charge ground of inadmissibility applied to these applicants. The Service concluded, therefore, that the public charge ground does not apply to CAA applicants. *Id.*

I have concluded that the same reasoning applies to inadmissibility for having arrived at a place other than a designated port-of-entry. Aliens arriving in this manner have been eligible for CAA adjustment for many years. Congress recently reaffirmed the availability of this adjustment provision, by enacting that the CAA is to continue in force until there is a democratic government in Cuba. Illegal Immigration Reform and Immigrant Responsibility Act of 1966 (IIRIRA), Pub. L. No. 104-208, Division C, § 606(a), 110 Stat. 3009-546, 3009-695. Section 212(a)(6)(A)(i) of the INA was designed to complement the new legal doctrine, enacted as part of IIRIRA, under which aliens who come into the United States without inspection are inadmissible, rather than deportable, aliens. *Compare* INA §§ 212(a)(6)(A)(i) and 235(a)(1), 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1225(a)(1) *with* 8 U.S.C. § 1241(a)(1)(B) (1994). Nothing in the legislative history of these changes suggests that Congress also intended to make aliens who arrive in the United States away from ports-of-entry ineligible for CAA adjustment.

This policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." CAA § 1, 8 U.S.C. § 1255, note. The authority to parole an applicant for admission, of course, is set forth in § 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5), with § 236 of the INA, 8 U.S.C. § 1226, providing additional authority concerning the conditions the Service may place on the alien's parole. An alien who is present without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

Service officers will not deny parole to an alien whose parole would be consistent with Service parole regulations and policy, solely in order to preclude CAA eligibility. Nor does this policy require the parole of any alien whose parole would not be consistent with Service parole regulations and policy, merely because paroling the alien would open the path to CAA adjustment. In the absence of a disqualifying criminal record or other factors that would bar CAA adjustment, however, the on-going difficulty in actually removing aliens to Cuba and the availability of CAA adjustment should ordinarily weigh heavily in favor of a grant of parole.

The Service may properly consider the avoidance of detention costs with respect to an alien whose actual removal is unlikely as a factor in determining, as a matter of discretion, that parole would yield a "significant public benefit." INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). In similar fashion, the Service may properly consider the availability of CAA adjustment as a factor in determining, as a matter of discretion, that an "urgent humanitarian reason" justifies a grant of parole. *Id.* If the Service paroles the alien, he or she will be eligible to apply for employment authorization. 8 C.F.R. § 274a.12(c)(12).

The Service is also aware that, because of the CAA eligibility requirements, the parole will be for at least 1-year, so that the alien will be a "qualified alien" for purposes of eligibility for Federal means-tested public benefits. 8 U.S.C. § 1641(b)(4). The alien will also be a "Cuban-Haitian entrant" for purposes of the Refugee Education Assistance Act of 1980, as amended. 8 C.F.R. § 212.5(g). Service officers will not consider these two factors as "adverse factors" in determining whether to grant or deny parole.

Finally, the Office of the General Counsel has advised the Service concerning the relationship between parole under § 212(d)(5) and "release" under § 236. Memorandum from Paul W. Virtue to Executive Associate Commissioners for Policy and Planning and for Field Operations, and to Regional, District and Sector Counsels (August 21, 1998). In a case involving an applicant for admission, the General Counsel concluded that

> . . . release under § 236 of the Act and 8 C.F.R. § 236.1(d)(1) should not be seen as a separate form of relief from custody. Any release of an applicant for admission from custody, without resolution of his or her admissibility, is a parole. (Citations omitted.) In the case of an applicant for admission who is not an "arriving alien," therefore, § 212(d)(5)(A) and § 236 should be seen as complementary, rather than as alternative release mechanisms.

Id. at 3. For this reason, if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under § 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under § 212(d)(5)(A).[1]

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[1] It may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released. The Service will then update the Service records concerning the alien to reflect the fact that the alien has been paroled.

U.S. Department of Justice
Immigration and Naturalization Service

HQCOU 120/17-P

Office of the General Counsel

425 I Street NW
Washington, DC 20536

AUG 21 1998

MEMORANDUM FOR EXECUTIVE ASSOCIATE COMMISSIONER FOR POLICY AND PLANNING
EXECUTIVE ASSOCIATE COMMISSIONER FOR FIELD OPERATIONS
ALL REGIONAL COUNSELS
ALL DISTRICT COUNSELS
ALL SECTOR COUNSELS

FROM. Paul W. Virtue
General Counsel

SUBJECT: Authority to parole applicants for admission who are not also arriving aliens

I. QUESTION

This memorandum addresses the following issue, which has arisen recently in several cases in the Miami district:

Does the Service have authority to parole an applicant for admission who is not also an "arriving alien," as defined by 8 C.F.R. § 1.1(q)?

II. SUMMARY CONCLUSION

Aliens who were once deportable for having entered without inspection are now considered in law to be applicants for admission, *Id.* § 235(a)(1)(A), 8 U.S.C. § 1225(a)(1)(A), who are inadmissible, *Id.* § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). As aliens applying for admission, they are within the scope of the statutory parole authority. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). The Service has authority, therefore, to parole an applicant for admission who is not also an "arriving alien," as defined by 8 C.F.R. § 1.1(q). It remains the case, however, that parole is an act of discretion, not an entitlement. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

III. ANALYSIS

This question over the extent of the parole authority arises because of two significant amendments to the immigration laws enacted in 1996. INA § 212(a)(6)(A)(i) and 235, 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1225, *as amended by* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Division C, §§ 301(c) and 302(a), 110 Stat. 3009-546, 3009-578, 3009-579. First, aliens who are present in the United States without having been admitted or paroled are now deemed to be applicants for admission, *Id.* § 235(a)(1), 8 U.S.C. § 1225(a)(1), who are inadmissible, *id.* § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). Before this amendment, of course, aliens who had entered the United States without having been inspected were amenable to deportation, rather than to exclusion, proceedings. 8 U.S.C. § 1251(a)(1)(B) (1994). Second, Congress has now provided for an expedited removal proceeding, conducted by a Service officer, rather than an immigration judge. INA § 235(b)(1)(A), 8 U.S.C. § 1225(b)(1)(A). The Service may invoke this procedure if an alien "who is arriving in the United States" is inadmissible because the alien does not have the required passport or visa, or because the alien obtained a passport or visa by fraud or material misrepresentation. The Service has defined by regulation which aliens are to be considered "arriving aliens." 8 C.F.R. § 1.1(q), *as amended*, 63 *Fed. Reg.* 19,382, 19,383 (1998). The consequence of these two amendments is that there are now two categories of applicants for admission: those who are arriving aliens, and those who are not. *See, e.g.*, 62 *Fed. Reg.* 444, 444 5 (1997).[1]

INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), gives the Attorney General authority to parole from custody "an alien applying for admission" who would otherwise be held in custody until the Attorney General had resolved whether to admit or remove the alien. In order to exercise this authority, the Attorney General must find, on a case-by-case basis, either that "urgent humanitarian reasons" justify the parole, or that paroling the alien will yield a "significant public benefit." *Id.* Even if the Attorney General finds that either factor exists, parole remains a matter of discretion. In fact, there is no judicial review of the exercise of this discretion. *Id.* § 242(a)(2)(B)(ii), 8 U.S.C. § 1252(a)(2)(B)(ii). The Attorney General has delegated this parole authority to the Service. 8 C.F.R. § 2.1.

As we have already noted, aliens who were once deportable for having entered without inspection are now considered in law to be applicants for admission, *id.* § 235(a)(1)(A), 8 U.S.C. § 1225(a)(1)(A), who are inadmissible, *Id.* § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). As aliens applying for admission, they are within the scope of the statutory parole authority. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

The question whether there is authority to parole these aliens arises not from the statute itself, but from an implementing regulation. 8 C.F.R. § 212.5. Section 212.5(a) specifies

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[1] The Attorney General has the authority to invoke the expedited removal proceeding against an alien who is inadmissible because he or she is present in the United States without admission or parole, if the alien has been physically present for less than 2 years. INA § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). To date, neither the Attorney General nor the Commissioner has chosen to exercise this authority. 8 C.F.R. § 235.3(b)(1)(ii); *cf.* 62 *Fed. Reg.* 10,312, 10,313 (1996).

circumstances in which it is, generally, appropriate to parole aliens "detained in accordance with § 235.3(b) or (c)." *Id.* Sections 235.3(b) and (c), in turn, refer not to the universal set of all applicants for admission, but to the subset of arriving aliens. 8 C.F.R. § 235.3(b) (arriving aliens subject to expedited removal) and (c) (arriving aliens subject to § 240 removal proceedings).[2] Section 212.5(b) refers to "all other arriving aliens." 8 C.F.R. § 212.5(b). Neither § 212.5(a) nor § 212.5(b) addresses the parole of applicants for admission who are not also "arriving aliens." Neither provision, therefore, purports to prohibit the Service from exercising the Attorney General's broad statutory parole authority in the case of an applicant for admission who is not an "arriving alien."

For two reasons, we conclude that § 212.5 cannot correctly be read as exhausting the Service's parole authority. First, nothing in § 212.5 expressly purports to forbid the parole of applicants for admission who are not also arriving aliens. Section 212.5 simply says nothing at all about that issue. Second, as we have noted, the Attorney General has delegated to the Commissioner the fullness of the Attorney General's statutory authority under the INA, except for matters delegated to the Executive Office for Immigration Review. 8 C.F.R. § 2.1. The Service, therefore, may parole anyone whom the Attorney General may parole.

We are mindful of the protracted litigation that resulted in the Supreme Court's judgment in *Jean v. Nelson*, 472 U.S. 846 (1985). But our reading of § 212.5 is an expansive, not a restrictive, application of the parole authority. A rule that said, in effect, that the parole authority is as broad as the statute says it is, would clearly be an interpretative rule. There is no obligation to publish interpretative rules in accordance with the APA. 5 U.S.C. § 553(b)(A) and (d)(2).

We are also aware of the argument that our conclusion, in effect, gives an inadmissible applicant for admission who is not an arriving alien "two bites at the apple" in seeking release from custody. If the Service denies a parole request, the alien may seek release from the immigration judge. 8 C.F.R. § 236.1(d)(1). The restrictions on the immigration judge's authority would not apply, since the alien is not an "arriving alien." *Cf.* 8 C.F.R. §§ 3.19(h)(1)(B) and (2)(I)(B) and 236.1(c)(11), *as amended*, 63 *Fed. Reg.* 27,441, 27,448-49 (1998). But release under § 236 of the Act and 8 C.F.R. § 236.1(d)(1) should not be seen as a separate form of relief from custody. Any release of an applicant for admission from custody, without resolution of his or her admissibility, is a parole. *See* INA §§ 101(a)(13)(B) and 212(d)(5)(A), 8 U.S.C. §§ 1101(a)(13)(B) and 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 189 (1958); *Matter of L- Y- Y-*, 9 I & N Dec. 70, 71 (BIA 1960). In the case of an applicant for admission who is not an "arriving alien," therefore, § 212(d)(5)(A) and § 236 should be seen as complementary, rather than as alternative release mechanisms. We realize that the traditional rule has been that neither the Board nor an immigration judge had authority to exercise the parole authority. *Matter of Conceiro*, 14 I & N Dec. 278, 281 (BIA 1973). But the Board based this rule on the fact that the Attorney General had established by regulation that only the Service could exercise the parole authority on the Attorney General's behalf. *Id.* The statute itself does

[2] Section 235.3(b) also refers to applicants for admission who are not arriving aliens, but who are inadmissible, and subject to expedited removal, because they are present without admission or parole, but have been present for less than two years. 8 C.F.R. § 235.3(b)(1)(ii). No aliens currently belong to this subset, since neither the Attorney General nor the Commissioner has provided for the use of expedited removal proceedings for these aliens.

not forbid delegation of the parole authority to officials who are not Service officers. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

The Service may consider it imprudent, as a matter of policy, to permit an immigration judge to adjudicate requests for release made by applicants for admission who are not arriving aliens. The way to achieve this policy, however, is to ask the Attorney General to amend 8 C.F.R. §§ 3.19 and 236.1. Taking the position that the Service has no authority to parole in these cases does not amend the regulations that appear to permit an immigration judge to adjudicate a request for release, if the applicant for admission is not an arriving alien.

We conclude that the Service may, in the exercise of discretion, parole any applicant for admission, if the Service finds that parole would serve urgent humanitarian reasons or yield a significant public benefit. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 2.1. Aliens present in the United States without having been admitted or paroled are applicants for admission. *Id.* § 235(a)(1)(A), 8 U.S.C. § 1225(a)(1)(A). To say that these aliens are *eligible* for parole, of course, does not mean that they are *entitled* to parole. Whether to parole any particular alien remains a matter entrusted to the exercise of discretion. *Id.* § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). The exercise of this discretion is not subject to judicial review. *Id.* § 242(a)(2)(B)(ii), 8 U.S.C. § 1252(a)(2)(B)(ii).