

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW, Room 6100
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MAR 14 2007

MEMORANDUM FOR: Special Agents in Charge, Field Office Directors, and
Chief Counsels

FROM: Julie L. Myers *JM*
Assistant Secretary

SUBJECT: Guidance Relating to INA § 235(c): Removal of Aliens on Security
and Related Grounds

Section 235(c) of the Immigration and Nationality Act (INA) and its implementing regulations at 8 C.F.R. § 235.8 provide for the expedited removal of arriving aliens based on certain security and related grounds.

Typically, to initiate a section 235(c) proceeding, U.S. Customs and Border Protection (CBP) serves an alien with Form I-147, Notice of Temporary Inadmissibility, and notifies the alien of the right to submit a written statement and any additional information for consideration.¹ CBP may take a brief question and answer statement from the alien.

CBP then forwards any and all relevant information, together with any written submissions from the alien, to ICE for further action. The ICE Assistant Secretary may then order the alien removed without any further inquiry or a hearing before an immigration judge if:

- the Assistant Secretary is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A)(other than clause (ii)), (B), or (C) of section 212(a)(3); and
- after consulting with the appropriate security agencies, the ICE Assistant Secretary concludes that disclosure of the information would be prejudicial to the public interest, safety, or security.

If the ICE Assistant Secretary believes that the foregoing two conditions exist, the Assistant Secretary may order the alien removed by personal service of Form I-148, Notice of Permanent

¹ Sections 235(c) and its implementing regulations at 8 C.F.R. § 235.8 have not been amended to account for the creation of the Department of Homeland Security and the separation of immigration enforcement functions between U.S. Immigration and Customs Enforcement (ICE) and CBP. This guidance envisions the respective roles of ICE and CBP in a section 235(c) proceeding based on the Secretary of Homeland Security's delegation of authority to the Assistant Secretary for ICE. See Delegation Number 7030.2, Section 2, Subsection (CC), Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement.

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Inadmissibility. If the two conditions are not met, the Assistant Secretary may direct either a further examination of the alien concerning the alien's inadmissibility; that the alien's case be referred to an immigration judge for a hearing; or for the continuation of a prior hearing.

Pursuant to Delegation Number 7030.2, section 2, subsections (T) and (CC) from the Secretary to the ICE Assistant Secretary, I hereby issue the following guidance regarding the application of INA § 235(c) and its implementing regulations at 8 C.F.R. § 235.8. Upon service of Form I-147 on an alien, such alien will be provided a minimum of fifteen calendar days to submit a written statement and any additional information for consideration by the Assistant Secretary. The fifteen day period may be abbreviated, in the Assistant Secretary's discretion, after consultation with the Secretary of Homeland Security.

The policy set forth in this memorandum is effective immediately and is for internal application within ICE only. It does not create any private right of action or other judicially or administratively enforceable right, interest, privilege, claim, defense, presumption, or remedy.

Questions about the information provided in this memorandum may be directed to (b)(6),(b)(7)(C), Chief, National Security Law Division (NSLD) or (b)(6),(b)(7)(C) Associate Legal Advisor, NSLD, (202) 514-(b)(6),(b)(7)(C)