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Retrieval (on tape)
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MEMORANDUM FOR DAVID CROSLAND
Acting Commissioner
Immigration and Naturalization Service

Re: Proposed Revocation by the Immigration and Naturalization
Service of Certain Travel Restrictions on Permanent
Resident Aliens (8 C.F.R. § 211.1(b))

This responds to your request for our opinion whether President Carter's revocation of the prohibitions contained in E.O. 12211, in connection with the agreement with Iran, removed the legal basis for Immigration and Naturalization Service ("INS") regulations issued pursuant to that Order. We conclude that President Carter, in issuing E.O. 12282, intended to remove the travel restrictions INS promulgated pursuant to E.O. 12211. INS should therefore revoke its amendments to 8 C.F.R. § 211.1(b) which restrict the re-entry of permanent resident aliens who travel to Iran. 1/

On April 17, 1980, President Carter, in connection with the hostage crisis, issued E.O. 12211 (45 Fed. Reg. 26635 (1980)), which prohibited certain trade with Iran and in relevant part authorized the Secretary of State to exercise the President's powers under section 215 of the Immigration and Nationality Act, 2/ 8 U.S.C. § 1185, to regulate the departures from and entry into

1/ We have been advised by the Department of State that it is planning to rescind its counterpart restrictions in the immediate future because it has concluded that E.O. 12282 withdrew the legal authority for the restrictions.

2/ Section 215 of the Immigration and Nationality Act empowers the President during a national emergency to prohibit the departure from or entry to the United States of any alien "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;" 8 U.S.C. § 1185(a)(1).

the United States of permanent resident aliens in connection with travel to Iran. Pursuant to this authorization, the Secretary of State on April 23, 1980 published a notice providing that "travel from the United States of permanent resident aliens to, in, or through Iran is prohibited unless an exception to this prohibition is granted under the authority of the Secretary of State." Public Notice 712, 45 Fed. Reg. 27600 (1980).

To conform its regulations to the Department of State's notice, INS, on May 2, 1980, amended 8 C.F.R. § 211.1(b) to prohibit the re-entry of any permanent resident alien who, during his absence abroad, traveled to, in, or through Iran, unless the Department of State had approved such travel. 45 Fed. Reg. 30062 (1980). In issuing its regulation, INS stated that the amendments were made pursuant to E.O. 12211. Id. On January 19, 1981, President Carter, as part of the agreement with Iran, issued E.O. 12282, which revoked the prohibitions contained in certain Executive orders and proclamations including E.O. 12211. This revocation raises the question whether INS's amendments to 8 C.F.R. § 211.1(b) should likewise be revoked.

Because E.O. 12282 states that the prohibitions contained in E.O. 12211 are revoked rather than revoking E.O. 12211 in toto, it is not clear from the face of E.O. 12282 that the delegation of the President's authority under which the travel restrictions were promulgated was necessarily revoked. As mentioned above, E.O. 12211, in addition to delegating the President's § 215 power, expressly prohibited certain trade with Iran and referred to the trade sanctions as "prohibitions." Thus, it could be argued that E.O. 12282 revoked only the trade sanctions contained in E.O. 12211 and not the delegations of authority. This argument would draw support from the "Declaration of the Government of the Democratic and Popular Republic of Algeria" ("Declaration") which requires that the United States revoke trade sanctions and did not address travel restrictions. Declaration at 4.

We have, nonetheless, concluded that, in issuing E.O. 12282, President Carter intended to revoke the travel restrictions promulgated pursuant to the delegation of § 215 authority to the Secretary of State. In Attorney General Civiletti's letter advising President Carter on the form and legality of E.O. 12282, the Attorney General indicated that the travel restrictions authorized by E.O. 12211 were "prohibitions"

that would be revoked by E.O. 12282:

The seventh proposed Executive order is captioned "Revocation of Prohibitions against Transactions Involving Iran." It revokes the prohibitions of Executive Order No. 12205 of April 7, 1980; Executive Order No. 12211 of April 17, 1980; and Proclamation 4702 of November 12, 1979. The two Executive orders limited trade with and travel to Iran. The proclamation restricted oil imports from Iran. It is my understanding that although the prohibitions are revoked, the underlying declarations of emergency remain in effect.

Letter of January 19, 1981 from Attorney General Benjamin R. Civiletti to President Jimmy Carter at 10.

This construction of E.O. 12282 was adopted by President Carter in his report to Congress, which was issued contemporaneously with the Executive orders implementing the agreement with Iran. President Carter made it clear in the report that he intended in issuing E.O. 12282 to revoke not only the trade sanctions contained in E.O. 12211, but also the travel restrictions promulgated pursuant to the Order:

Seventh, I will sign, upon release of the hostages, an Executive Order revoking prohibitions previously imposed against transactions involving Iran. The Executive Order revokes prohibitions contained in Executive Order No. 12205 of April 7, 1980; and Executive Order No. 12211 of April 17, 1980; and the amendments contained in Proclamation No. 4702 of November 12, 1979. The two Executive Orders limited trade and financial transactions involving Iran and travel to Iran. The proclamation restricted oil imports. In revoking these sanctions I have no intention of superseding other existing controls relating to exports including the Arms Export Control Act and the Export Administration Act.

Report to the Congress of the United States from President Carter dated January 19, 1981 at 3 (emphasis added).

In concluding that President Carter intended by issuing E.O. 12282 to revoke the travel restrictions promulgated pursuant to E.O. 12211, including the restrictions on re-entry of permanent resident aliens contained in the amendments to 8 C.F.R. § 211.1(b),

we do not mean to suggest that similar restrictions could not be imposed if thought necessary. Under 8 U.S.C. § 1203(b), re-entry permits may be denied aliens if the Attorney General finds that their proposed departure is contrary to the interests of the United States. 3/ Whether such restrictions should be reimposed is a question of policy upon which we make no recommendation.

Larry L. Simms
Acting Assistant Attorney General
Office of Legal Counsel

cc: The Deputy Attorney General

3/ Further, President Carter, in E.O. 12172 (44 Fed. Reg. 67947 (1979)), as amended by E.O. 12206 (45 Fed. Reg. 24101 (1980)), delegated to the Attorney General and the Secretary of State his authority under § 215 of the Immigration and Nationality Act (8 U.S.C. § 1185) with respect to Iranians. While the declaration of national emergency remains in effect, this authority may be invoked to restrict travel of permanent resident aliens who are nationals of Iran upon a finding that the interests of the United States require such restrictions.