



RESPONSES TO INFORMATION REQUESTS (RIRs)

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Biographies		
Organization Chart	United States/Cuba: Whether the United States (US) deports Cuban nationals who do not have legal status in the US; if not, what happens to Cubans in the US who lose their permanent resident status or other legal status; whether Cubans with illegal status in the US can work and live in the US	
Employment		
Legal and Policy		
References	Research Directorate, Immigration and Refugee Board of Canada, Ottawa	
Publications		
Tribunal		
Refugee Protection Division	The following information was provided by a refugee officer with the Caribbean and Americas Unit, Refugee Affairs Division of the United States (US) Citizenship and Immigration Services (USCIS) in correspondence to the Research Directorate dated 23 January 2008:	
Immigration Division		
Immigration Appeal Division	The United States may return certain applicants for admission at United States ports-of-entry without a full review of inadmissibility by an immigration court: [t]his is known as the "expedited removal" process. In general, applicants for admission who do not have documents required for admission, or who have false documents, are subject to immediate return to the state from which they arrived....	
Decisions		
Forms		
Statistics	Cuban natives and citizens, however, are treated differently than most arrivals at U.S. ports-of-entry. For instance, the Immigration and Nationality Act (INA) provides that Cuban nationals arriving by aircraft are exempt from expedited removal proceedings. Similarly, under current policy, natives or citizens of Cuba arriving at land border ports-of-entry without proper entry documents are not generally placed in expedited removal proceedings. Instead, they are placed in Immigration and Nationality Act (INA) section 240 "removal proceedings" before an Immigration Judge, in lieu of expedited removal, and are generally paroled from the land border port-of-entry while awaiting such proceedings. In these proceedings, they may apply for adjustment of status to that of lawful permanent resident (LPR) under the Cuban Adjustment Act (CAA) or pursue a claim for asylum. The CAA provides for a special procedure under which Cuban natives or citizens, and their accompanying spouses and children, can apply for adjustment of status to that of a permanent resident one year after they have arrived in the United States, provided they have been admitted or paroled into the United States and that they are admissible as immigrants. Adjustment is at the discretion of the Secretary of the Department of Homeland Security.	
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Proactive Disclosure	There is no policy against removing Cuban nationals from the United States. The United States would seek to remove Cubans who have final removal orders to Cuba, but for the Government of Cuba's (GOC) refusal to accept the return of its nationals, which is contrary to international law. Under the provisions of a 1995 migration agreement between the United States and Cuba (discussed in more detail	

below), Cuban migrants interdicted at sea are generally returned directly to the Republic of Cuba. Cubans who reach U.S. shores are not covered by the 1995 agreement and, because the U.S. Government does not have a return agreement with the GOC, such individuals, for the most part, cannot be repatriated to Cuba from the United States.

The United States does continue to repatriate persons comprising a specific group of excludable Cubans pursuant to a 1984 agreement between the United States and Cuba (Agreement Signed on Mariel Excludables, regarding the return to Cuba of Cubans ineligible to remain in the U.S.).

...

... the United States and Cuba entered into a May 2, 1995 agreement allowing the United States to return Cubans interdicted at sea directly to the Republic of Cuba. However, such returns only occur after it has been determined that a migrant does not have protection concerns. ... Those migrants who cannot be returned to the Republic of Cuba are referred to the Department of State for resettlement in a third country, not the United States. Outside of the context of the Migration Accords, Cuba does not recognize its obligation under international law to accept the return of its citizens.

Cuban migrants who reach United States shores are not covered by the 1995 agreement and, because the United States Government does not have a return agreement with the Government of Cuba, these individuals cannot be repatriated to Cuba from the United States. In addition to the rights afforded to all aliens arriving in the United States under the INA, Cubans may apply for permanent residence under the CAA, once they have been present in the United States for at least one year and have been admitted or paroled, provided they are admissible as immigrants.

...

If a Cuban native or citizen is paroled into the United States, and has not yet adjusted to lawful permanent resident (LPR) status, his or her parole would automatically terminate upon departure from the United States, and he or she would have no right to return. Upon return, he or she would be treated as any other arriving Cuban national.

Any lawful permanent resident alien who departs the United States and returns after being absent continuously for more than 180 days, must seek admission at a port of entry, and he or she will generally be admitted upon presentation of his or her unexpired lawful permanent resident card, unless the individual has abandoned his or her status or has engaged in certain criminal activity. A lawful permanent resident who has been outside the United States for more than one year and who does not present a reentry permit, or who has abandoned his or her status or engaged in certain criminal activity, is not eligible for admission as a returning resident and is subject to removal proceedings under section 240 of the INA.

Cuban natives and citizens arriving in the United States are afforded the added protections of the CAA, as described previously, and may, upon arrival at a port-of entry, be granted parole and again seek permanent residency one year after their arrival, provided they have been admitted or paroled and are not otherwise inadmissible. A Cuban national who is not granted adjustment of status under the CAA, however, may be ordered removed from the United States.

As the U.S. Government does not have a return agreement with the Government of Cuba for Cuban natives or citizens who have reached U.S. soil, these individuals cannot be repatriated to Cuba from the United States. Cuban nationals ordered removed from the United States, however, may be removed to third countries. ... In rare instances, the Cuban government has accepted the return of its nationals

on an individual basis.

A Cuban parolee may file for an employment authorization document. In addition, any alien who has filed an application for adjustment of status to lawful permanent resident may apply for employment authorization. An alien who has been ordered removed from the United States, in most cases, is ineligible for employment authorization.

The following information was provided by a supervising attorney at the Florida Immigrant Advocacy Center (FIAC) during a telephone conversation with the Research Directorate on 25 September 2007. The Attorney explained that the US does not have a policy preventing them from deporting Cuban nationals; however, Cuba does not accept returnees and, as such, the US generally cannot return Cuban nationals to Cuba. Cubans who lose their permanent residency status have to reapply for their permanent residency status from the beginning of the process such as any other nationals who lose their permanent residency status would have to do. Cubans who have been lawfully admitted or paroled into the US and have been present in the US for over one year can apply for residency under the Cuban Adjustment Act. To be granted residency, they must also not fall within any of the grounds of inadmissibility, or if they do, qualify for a waiver of that ground. Most people who lose their residency status are not eligible to reapply for their residency, including Cubans. Those few Cubans who could, would be eligible to reapply under the Cuban Adjustment Act if they meet the requirements of the Act and do not fall within the grounds of inadmissibility and/or qualify for a waiver. Once a Cuban national loses his or her US permanent residency status, an order of removal would likely be issued against them. In such cases, because Cuban nationals cannot generally be physically deported, they would receive an order of supervision which would allow them to work and stay in the US; yet, they still would be subject to an order of removal which could be acted upon if ever the situation with Cuba changed.

In a telephone interview with the Research Directorate on 24 January 2008, an American attorney specializing in immigration law corroborated the information provided by FIAC, i.e., that the US does not deport Cuban nationals to Cuba as Cuba does not take them back and that Cuban nationals with no legal status in the US could be subject to an order of supervision, under which they would have to report on an ongoing basis to US immigration authorities and under which they could apply for a work permit.

The following information was provided by the Legal Director at the Capital Area Immigrants' Rights (CAIR) Coalition, an organization that provides support and empowerment programs to immigrants including education and legal support services, in correspondence dated 23 January 2008 to the Research Directorate:

We frequently assist Cuban nationals who are in immigration detention facing deportation to Cuba. US cannot deport anyone to Cuba because of the lack of diplomatic relations between our countries. Thus, Cubans with final orders of removal are typically held in immigration detention by the Dept. of Homeland Security for 6 months while DHS allegedly tries to deport them to a third country. After 6 months, the US Supreme Court decision against indefinite detention kicks in and the Cubans are released under an Order of Supervision where they have no technical immigration status and must report to DHS officials regularly.

If Cubans have no immigration status and have a final order of removal, they may still be eligible for work authorization. We routinely see immigrants who have been released on an Order of Supervision and subsequently given work authorization. I guess that is a form of legal status. There is also the Cuban Adjustment Act which allows Cubans without criminal convictions to adjust to valid immigration status

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This

Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

Attorney specializing in immigration law, Washington, DC. 24 January 2008. Telephone interview.

Capital Area Immigrants' Rights (CAIR) Coalition. 23 January 2008. Correspondence from the Legal Director.

Florida Immigrant Advocacy Center (FIAC). 25 September 2007. Telephone interview with a supervising attorney.

United States (US). 23 January 2008. US Citizenship and Immigration Services (USCIS), Refugee Affairs Division. Correspondence from a refugee officer of the Caribbean and Americas Unit.

Additional Sources Consulted

Oral sources: Attempts to contact the Center for Cuban Studies were unsuccessful.

The Embassy of the United States in Ottawa, the Center for Immigration Studies (CIS), the United States Interests Section in Havana, the American Immigration Law Foundation (AILF) and the Center for Research on Immigration Policy from RAND did not have information on the subject.

A professor at the Florida International University College of Law did not provide information within the time constraints of this Response.

Internet sites, including: American Immigration Law Foundation (AILF), Center for Immigration Studies (CIS), Congressional Research Service (CRS), Department of Homeland Security, United States Citizenship and Immigration Services (USCIS), United States Department of State, United States Immigration Assistance Center.

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