

Subject

Interviews of "Screened In" Persons
Subject to Medical Exclusion

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To

John Cummings
INS/GTMO

From

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General Counsel

As you know, there are a number of persons at the naval base in Guantanamo who have been "screened in" as possible refugees but who have been determined to have a communicable disease of public health significance.

The Immigration and Nationality Act (INA) requires that persons with communicable diseases of public health significance "shall be excluded from admission into the United States." INA § 212(a)(1). With respect to persons who are determined to be refugees, however, the Act provides that the Attorney General may waive the medical exclusion "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Id. § 207(c)(3). Such a waiver must be in writing and shall be granted only on an individual basis following an investigation. Id.

The Act further provides that the Attorney General may temporarily parole aliens into the United States "for emergent reasons or for reasons deemed strictly in the public interest." Id. § 212(d)(5)(A). Such parole does not constitute an admission into the United States and confers no immigration or refugee status. Id. Moreover, a person who is a refugee may be paroled into the United States (rather than admitted as a refugee under the formal refugee admission process) only when the Attorney General finds parole to be "require[d]" by "compelling reasons in the public interest." Id. § 212(d)(5)(B).

With respect to a person whose application for parole is premised on the possibility that he or she may be a refugee, but who has been determined to have a communicable disease of public health significance, the judgment with respect to whether parole is required by "compelling reasons in the public interest" should be informed by the same factors that would justify a waiver of the medical exclusion if the person were to seek admission as a refugee. That is, the waiver must be justified "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Id. § 207(c)(3).

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At a minimum, this requires a determination that the person is in fact a refugee.

Accordingly, any person "screened in" as a possible refugee who has been determined to have a communicable disease that is not curable should be given an interview to determine whether he or she is a refugee within the definition of INA § 101(a)(42). In the case of a Haitian national in Guantanamo, this definition requires a finding that the person is unable or unwilling to return to Haiti because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. This finding is identical to that required to grant asylum or refugee status. The interview should therefore be identical in form and substance, or as nearly so as possible, to those conducted by asylum officers to determine whether asylum should be granted to an applicant already in the United States.

Interviews should be conducted according to the usual standards and techniques for asylum interviews. See Interview Checklist, INS Asylum Branch Procedures Manual and Operations Instructions, p. 121 (March 1992). An Asylum Assessment should be prepared for each applicant, in accordance with the assessment format set forth in the Procedures Manual and Operations Instructions. See *id.* at 124-25. All assessments should be forwarded to the Director of the Asylum Branch. When the interviewing asylum officer determines that an applicant is not credible, or that the facts adduced in the interview are insufficient, even if true, to establish a well founded fear of persecution within the definition of the Act, this determination should be noted in the assessment along with the reasons therefor. When the interviewing officer determines that an applicant appears credible and that the facts adduced would, if true, establish a well founded fear of persecution, the assessment will be forwarded to the State Department for information concerning the accuracy of the applicant's assertions about his or her experiences and about country conditions. See 8 C.F.R. § 208.11.

These procedures should be followed only with respect to persons whose communicable diseases of public health significance are not curable. Persons whose diseases are susceptible of prompt treatment and cure, and who would not thereafter be medically excludable, should be handled in accordance with established procedures pending further guidance.