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425 I Street NW
Washington, DC 20536

April 2, 2003

MEMORANDUM FOR SERVICE CENTER DIRECTORS, BCIS
       REGIONAL DIRECTORS, BCIS
       OFFICE OF INTERNATIONAL AFFAIRS
       DIRECTOR, ADMINISTRATIVE APPEALS OFFICE

FROM: Thomas E. Cook /s/
      Acting Assistant Commissioner
      Office of Adjudications

SUBJECT: Guidance on Interpretation of "Period of Stay Authorized by the Attorney
      General" in Determining "Unlawful Presence" under section 212(a)(9)(B)(ii) of
      the Immigration and Nationality Act (Act)

   Attached is a legal memorandum from the Bureau of Citizenship and Immigration
Services (BCIS) Office of General Counsel. It provides guidance to address questions on the
accrual of unlawful presence. Specifically, the questions related to an alien who filed an
application for extension of stay after the alien's authorized period of admission expired, but
while in a period of authorized stay. The attached memorandum provided by the BCIS Office of
General Counsel is BCIS policy.

   Legal Memorandum

   The attached legal memorandum, responding to questions from the Texas Service Center,
advises that where the alien files a timely application for extension of stay (EOS) or change of
status (COS), and where the application is denied, the alien can begin to accrue unlawful
presence beyond the date of the denial regardless of whether the alien filed additional, but
untimely, applications for EOS or COS. The BCIS Office of the General Counsel further advises
that an application for EOS or COS filed after the alien's authorized period of admission has
expired does not have the effect of prolonging the alien's status. The legal memorandum
references two previously issued field memoranda, which are also attached:

- *Period of stay authorized by the Attorney General after 120-day tolling period for*
  purposes of section 212(a)(9)(B) of the Immigration and Nationality Act, March
  3, 2000 ("3/3/00 Pearson memo"), and

- *Unlawful Presence*, June 12, 2002 ("6/12/02 Williams memo").