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RECORD ID: 9803006
RECEIVED: 28 APR 98 11

TO: DAVIES

FROM: JUKES, J

DOC DATE: 27 APR 98
SOURCE REF: IMS311

KEYWORDS: REFUGEES
IMMIGRATION

HAITI
LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: OMB REQUEST FOR VIEWS ON S-1504 HAITIAN REFUGEE IMMIGRATION FAIRNESS
ACT OF 97

ACTION: ACTION COMPLETED BY PHONE

DUE DATE: 30 APR 98 STATUS: C

STAFF OFFICER: SCHWARTZ

LOGREF:

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D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

COMMENTS: ** DEADLINE IS NOON THURSDAY 30 APR 98 **

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DOC 1 OF 1

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ACTION DATA SUMMARY REPORT

RECORD ID: 9803006

DOC ACTION OFFICER

001 SCHWARTZ
001

CAO ASSIGNED ACTION REQUIRED

Z 98042811 PREPARE MEMO DAVIES TO JUKES
X 98050507 ACTION COMPLETED BY PHONE

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Total Pages: _____

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

3006

Monday, April 27, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ingrid M. Schroeder

PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: OMB Request for Views on S1504 Haitian Refugee Immigration Fairness Act of 1997

DEADLINE: Noon Thursday, April 30, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: S. 1504 was reported by the Senate Judiciary Committee on April 23rd.

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_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages _____**

_____ **Other: _____**

_____ **FAX RETURN of _____ pages, attached to this response sheet**

S 1504 RS

Calendar No. 343

105th CONGRESS

2d Session

S. 1504

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

IN THE SENATE OF THE UNITED STATES**November 9, 1997**

Mr. GRAHAM (for himself, Mr. MACK, Mr. KENNEDY, Mr. ABRAHAM, Ms. MOSLEY-BRAUN, Mr. MOYNIHAN, Mr. DURBIN, Mr. KERRY, Mrs. FEINSTEIN, and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

April 23, 1998

Reported by Mr. HATCH, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[Struck out->] SECTION 1. SHORT TITLE. [<-Struck out]

[Struck out->] This Act may be cited as the 'Haitian Refugee Immigration Fairness Act of 1997'. **[<-Struck out]**

[Struck out->] SEC. 2. ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS. [<-Struck out]

[Struck out->] (a) Adjustment of Status- [<-Struck out]

[Struck out->] (1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien **[<-Struck out]**

[Struck out->] (A) applies for such adjustment before April 1, 2000; and **[<-Struck out]**

[Struck out->] (B) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply. [<-Struck out]

[Struck out->] (2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS- An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition on submitting or granting such application, to file a motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made. [<-Struck out]

[Struck out->] (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS- The benefits provided by subsection (a) shall apply to any alien who is a national of Haiti-- [<-Struck out]

[Struck out->] (1) who filed for asylum before December 31, 1995, or was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, and [<-Struck out]

[Struck out->] (2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days. [<-Struck out]

[Struck out->] (c) Stay of Removal- [<-Struck out]

[Struck out->] (1) IN GENERAL- The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a). [<-Struck out]

[Struck out->] (2) DURING CERTAIN PROCEEDINGS- Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and raises as a defense to such an order the eligibility of the alien to apply for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application. [<-Struck out]

[Struck out->] (3) WORK AUTHORIZATION- The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment. [<-Struck out]

[Struck out->] (d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN- [<-Struck out]

[Struck out->] (1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if-- **[<-Struck out]**

[Struck out->] (A) the alien is a national of Haiti; **[<-Struck out]**

[Struck out->] (B) the alien is the spouse, child, or unmarried son or daughter, of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that they have been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed. **[<-Struck out]**

[Struck out->] (C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed; and **[<-Struck out]**

[Struck out->] (D) the alien is otherwise eligible to receive an immigration visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply. **[<-Struck out]**

[Struck out->] (2) PROOF OF CONTINUOUS PRESENCE- For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in aggregate not exceeding 180 days. **[<-Struck out]**

[Struck out->] (e) AVAILABILITY OF ADMINISTRATIVE REVIEW- The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to-- **[<-Struck out]**

[Struck out->] (1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act; or **[<-Struck out]**

[Struck out->] (2) aliens subject to removal proceedings under section 240 of such Act. **[<-Struck out]**

[Struck out->] (f) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court. **[<-Struck out]**

[Struck out->] (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE- When an alien is granted the status of having been lawfully admitted for permanent resident pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act. **[<-Struck out]**

[Struck out->] (h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS- Except as otherwise specifically provided in this Act, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this Act shall be held to

repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible. [~~Struck out~~]

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Haitian Refugee Immigration Fairness Act of 1998'.

SEC. 2. ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS.

(a) Adjustment of Status-

(1) IN GENERAL- The status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien--

(A) applies for such adjustment before April 1, 2000; and

(B) is otherwise admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act shall not apply.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS- An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition on submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS- The benefits provided by subsection (a) shall apply to any alien who is a national of Haiti who--

(1) was present in the United States on December 31, 1995, who--

(A) filed for asylum before December 31, 1995,

(B) was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, or

(C) was a child (as defined in the text above subparagraph (A) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) at the time of arrival in the United States and on December 31, 1995, and who--

(i) arrived in the United States without parents in the United States and has remained without parents in the United States since such arrival,

(ii) became orphaned subsequent to arrival in the United States, or

(iii) was abandoned by parents or guardians prior to April 1, 1998 and has

remained abandoned since such abandonment; and

(2) has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed, except that an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(c) Stay of Removal-

(1) IN GENERAL- The Attorney General shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS- Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has

applied for adjustment of status under subsection (a), except where the Attorney General has made a final determination to deny the application.

(3) WORK AUTHORIZATION- The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

(d) Adjustment of Status for Spouses and Children-

(1) IN GENERAL- The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if--

(A) the alien is a national of Haiti;

(B) the alien is the spouse, child, or unmarried son or daughter, of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that he or she has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed;

(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed; and

(D) the alien is otherwise admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act shall not apply.

(2) PROOF OF CONTINUOUS PRESENCE- For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW- The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to--

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act; or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE- When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS- Except as otherwise specifically provided in this Act, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this Act shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

SEC. 3. COLLECTION OF DATA ON DETAINED ASYLUM SEEKERS.

(a) IN GENERAL- The Attorney General shall regularly collect data on a nationwide basis with respect to asylum seekers in detention in the United States, including the following information:

(1) The number of detainees.

(2) An identification of the countries of origin of the detainees.

(3) The percentage of each gender within the total number of detainees.

(4) The number of detainees listed by each year of age of the detainees.

(5) The location of each detainee by detention facility.

(6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals.

(7) The number and frequency of the transfers of detainees between detention facilities.

(8) The average length of detention and the number of detainees by category of the length of detention.

(9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service.

(10) A description of the disposition of cases.

(b) ANNUAL REPORTS- Beginning October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsection (a) for the fiscal year ending September 30 of that year.

(c) AVAILABILITY TO PUBLIC- Copies of the data collected under subsection (a) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

SEC. 4. COLLECTION OF DATA ON OTHER DETAINED ALIENS.

(a) IN GENERAL- The Attorney General shall regularly collect data on a Nationwide basis on other aliens being detained in the United States by the Immigration and Naturalization Service, including the following information:

- (1) The number of detainees who are criminal aliens and the number of detainees who are noncriminal aliens who are not seeking asylum;*
- (2) An identification of the ages, gender, and countries of origin of detainees within each of these categories; and*
- (3) The types of facilities, whether INS or other Federal, State, or local facilities, in which each of these categories of detainees are held.*

(b) LENGTH OF DETENTION, TRANSFERS, AND DISPOSITIONS- With respect to detainees who are criminal aliens and detainees who are noncriminal aliens who are not seeking asylum, the Attorney General shall also collect data concerning--

- (1) the number and frequency of transfers between detention facilities for each category of detainee;*
- (2) the average length of detention of each category of detainee;*
- (3) for each category of detainee, the number of detainees who have been detained for the same length of time, in three-month increments;*
- (4) for each category of detainee, the rate of release from detention for each district of the Immigration and Naturalization Service; and*
- (5) for each category of detainee, the disposition of detention, including whether detention ended due to deportation, release on parole, or any other release.*

(c) CRIMINAL ALIENS- With respect to criminal aliens, the Attorney General shall also collect data concerning--

- (1) the number of criminal aliens apprehended under the immigration laws and not detained by the Attorney General; and*
- (2) a list of crimes committed by criminal aliens after the decision was made not to detain them, to the extent this information can be derived by cross-checking the list of criminal aliens not detained with other databases accessible to the Attorney General.*

(d) ANNUAL REPORTS- Beginning on October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsections (a), (b), and (c), for the fiscal year ending September 30 of that year.

(e) AVAILABILITY TO PUBLIC- Copies of the data collected under subsections (a), (b), and (c) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

Calendar No. 343

105th CONGRESS

2d Session

S. 1504

A BILL

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

April 23, 1998

Reported with an amendment in the nature of a substitute

END

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ACTION: PREPARE MEMO DAVIES TO JUKES

DUE DATE: 30 APR 98 STATUS: S

STAFF OFFICER: SCHWARTZ

LOGREF:

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D O C U M E N T D I S T R I B U T I O N

FOR ACTION
SCHWARTZ

FOR CONCURRENCE
BAKER
HOFMANN
RUDMAN

FOR INFO
CLARKE
DOBBINS

*Comments wally
replied
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COMMENTS: ** DEADLINE IS NOON THURSDAY 30 APR 98 **

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