

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT

4/1/00

INS Delaying Removal Action on Certain Cubans, Haitians and Nicaraguans

Congress is currently considering legislation that would reopen and extend the application period during which eligible aliens may apply for benefits under section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) or section 902 of the Haitian Refugee Immigration Fairness Act (HRIFA).

Accordingly, the Immigration and Naturalization Service (INS) has directed its field offices to delay the removal of any alien who appears to be eligible for adjustment of status under NACARA or HRIFA and did not file an adjustment application by the March 31, 2000 deadline.

- INS -



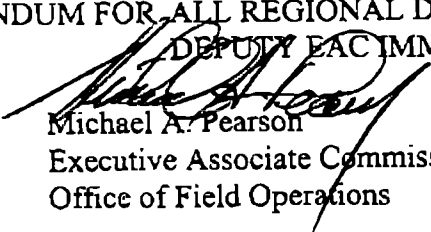
U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 31 2000

MEMORANDUM FOR ALL REGIONAL DIRECTORS
DEPUTY EAC IMMIGRATION SERVICES DIVISION

FROM: 
Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Post-March 31, 2000, Procedures for Aliens Who Have Been Issued Orders of Deportation or Orders of Removal and Fall Within the Classes of Aliens Described in the Nicaraguan Adjustment and Central American Relief Act (NACARA) Section 202 or the Haitian Refugee Immigration Fairness Act (HRIFA)

March 31, 2000, is the deadline for filing applications for adjustment of status by Nicaraguans and Cubans under section 202 of NACARA. It is also the deadline for filing applications for adjustment of status by Haitian principal applicants under HRIFA. Haitian dependent applicants (i.e., a principal applicant's spouse or child who entered the United States at any time, or a principal applicant's unmarried son or daughter who has been in the United States since December 31, 1995) may continue to file applications for adjustment of status under HRIFA, provided the principal applicant filed his or her application on or before March 31, 2000.

At the present time there are a number of bills pending in Congress to extend the NACARA and HRIFA filing deadlines. This memorandum provides instructions on the processing of removable aliens who did not apply for adjustment under NACARA section 202 or HRIFA during the statutory filing period but (1) are eligible to apply for adjustment of status as dependent applicants under HRIFA, or (2) might be eligible to apply for adjustment of status under NACARA section 202 or HRIFA if the filing deadline is extended.

- Aliens Eligible to Apply for Adjustment of Status as Dependent Applicants under HRIFA. If an encountered alien is eligible to apply for adjustment under HRIFA as a dependent applicant, but has not yet applied, defer any further removal action for 60 days and instruct the alien that he or she should file his or her application for adjustment within that period. If the alien does not apply for adjustment within 60 days of being so advised, you may initiate or resume removal action.

Memorandum for All Regional Directors

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Subject: Post March 31, 2000, Procedures for Aliens Who Have Been
Issued Orders of Deportation or Orders of Removal and Fall Within
the Classes of Aliens Described in NACARA Section 202 and HRIFA

- Aliens Under Final Orders Who May Be Eligible to Apply for Adjustment of Status under NACARA Section 202 or HRIFA If the Filing Deadline Is Extended. - Refer to the criteria set forth in NACARA section 202 and HRIFA for determinations as to whether an alien appears to be eligible for adjustment of status under those provisions of law (other than not having met the March 31, 2000, filing deadline). These criteria were also discussed in Headquarters memoranda of December 19, 1997, December 22, 1998, and February 18, 1999. If an alien who is under a final order of deportation or a final order of removal appears to be eligible to apply as either a principal applicant or a dependent applicant do not execute the order of deportation or the order of removal until further notice. If the alien is NOT eligible for adjustment (for example, if he or she is inadmissible under a ground which is not exempted by NACARA 202 or HRIFA and is not eligible for a waiver of such inadmissibility), the Order of Deportation or the Order of Removal may be executed.

Consistent with earlier guidance on NACARA and HRIFA, Nicaraguans, Cubans, and Haitians subject to mandatory detention shall not be released from custody based upon possible future eligibility for relief under NACARA and HRIFA should these forms of relief be extended. Possible eligibility under NACARA and HRIFA if the filing deadline is extended may, however, be considered for purposes of discretionary custody determinations.

If you have any questions, please contact David Venturella on 202-616-0002.

THE WHITE HOUSE

WASHINGTON

May 23, 2000

Dear Al:

Thank you for your letter requesting protection for Haitian, Cuban and Nicaraguan immigrants while legislation is pending to extend the deadline for them to apply for permanent resident status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA).

I share your concern regarding this issue. As you know, the INS recently directed its field offices to delay the removal of any immigrant who appears to be eligible for an adjustment of status under NACARA or HRIFA. I believe that this step will provide necessary protection for Haitian, Cuban and Nicaraguan immigrants while Congress considers legislation to extend the deadline for applications. Furthermore, I support your legislation to extend the application deadline until October 1, 2001.

I commend your leadership on this issue and look forward to continuing to work with you on this important matter.

Sincerely,



The Honorable Albert Russell Wynn
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

May 23, 2000

Dear Senator Abraham:

Thank you for your letter requesting protection for Haitian, Cuban and Nicaraguan immigrants while legislation is pending to extend the deadline for them to apply for permanent resident status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA).

I share your concern regarding this issue. As you know, the INS recently directed its field offices to delay the removal of any immigrant who appears to be eligible for an adjustment of status under NACARA or HRIFA. I believe that this step will provide necessary protection for Haitian, Cuban and Nicaraguan immigrants while Congress considers legislation to extend the deadline for applications. Furthermore, I support your legislation to extend the application deadline until October 1, 2001.

I commend your leadership on this issue and look forward to continuing to work with you on this important matter.

Sincerely,



The Honorable Spencer Abraham
United States Senate
Washington, D.C. 20510

S 2058 IS

106th CONGRESS

2d Session

S. 2058

To extend filing deadlines for applications for adjustment of status of certain Cuban, Nicaraguan, and Haitian nationals.

IN THE SENATE OF THE UNITED STATES

February 10, 2000

Mr. GRAHAM (for himself, Mr. MACK, Mr. KENNEDY, Mr. DURBIN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To extend filing deadlines for applications for adjustment of status of certain Cuban, Nicaraguan, and Haitian nationals.

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

SECTION 1. EXTENSION OF FILING DEADLINES FOR APPLICATIONS FOR ADJUSTMENT OF STATUS OF CERTAIN CUBAN, NICARAGUAN, AND HAITIAN NATIONALS.

(a) NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT- Notwithstanding the expiration of the application filing deadline in section 202(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (as contained in Public Law 105-100; 8 U.S.C. 1255 note), a Cuban or Nicaraguan national who is otherwise eligible for adjustment of status under that section may apply for that status through the date that is one year after the date of promulgation by the Attorney General of final regulations for the implementation of that section.

(b) HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT- Notwithstanding the expiration of the application filing deadline in section 902(a) of the Haitian Refugee Immigration Fairness Act of 1998 (as added by section 101(h) of division A of Public Law 105-277), a Haitian national who is otherwise eligible for adjustment of status under that section may apply for that status through the date that is one year after the date of promulgation by the Attorney General of final regulations for the implementation of that section.

END

INS one date regulation.

*Rep Meek has Oct 2001, or year
whichever later*

Bill Summary & Status for the 106th Congress

[NEW SEARCH](#) | [HOME](#) | [HELP](#) | [ABOUT COSPONSORS](#)

S.2058Sponsor: [Sen Graham, Bob](#) (introduced 2/10/2000)

Latest Major Action: 2/10/2000 Referred to Senate committee

Title: A bill to extend filing deadlines for applications for adjustment of status of certain Cuban, Nicaraguan, and Haitian nationals.

COSPONSORS(4), ALPHABETICAL [followed by Cosponsors withdrawn]: (Sort: [by date](#))[Sen Durbin, Richard J.](#) - 2/10/2000 [Sen Feinstein, Dianne](#) - 2/10/2000[Sen Kennedy, Edward M.](#) - 2/10/2000 [Sen Mack, Connie](#) - 2/10/2000

**U.S. Department of Justice****Office of Legislative Affairs**

Office of the Assistant Attorney General

Washington, DC 20530

April 12, 2000

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The purpose of this letter is to present the views of the Department of Justice on S. 2058 and H.R. 3572, bills which would extend the deadlines for applying for adjustment of status to lawful permanent resident under section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), and section 902 of the Haitian Refugee Immigration Fairness Act (HRIFA). These deadlines expired on March 31, 2000. The Department supports a reasonable extension of the deadlines, in order to ensure that eligible individuals have a full opportunity to apply for adjustment under HRIFA and section 202 of NACARA. As both S. 2058 and H.R. 3572 provide such a reasonable extension, either is acceptable to the Department; however, the Department supports the provisions of H.R. 3572 as preferable to S. 2058, for the reason stated below.

Both bills use the date of the final promulgation of the regulations to implement HRIFA and section 202 of NACARA as a benchmark. These regulations were promulgated on March 24, 2000. S. 2058 would extend the application deadline through the date that is one year after the date of promulgation (i.e., until March 23, 2001). H.R. 3572 would extend the deadline either to the date that is one year after the date of promulgation of the regulations -- March 23, 2001 -- or October 1, 2001, whichever is later. The Department prefers the October 1, 2001 date, which would provide more time to applicants and more time for the Immigration and Naturalization Service to publicize the change. As the date of the final regulations is now known (as it was not when these bills were introduced), and is prior to October 1, 2000, we recommend that the now-superfluous reference to the alternative date based upon the regulations be deleted, in favor of October 1, 2001.

Thank you for considering our views in this matter. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter. Please feel free to call upon us if we may be of additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Raben", written in a cursive style.

Robert Raben
Assistant Attorney General

IDENTICAL LETTER TO BE SENT TO THE HONORABLE PATRICK J. LEAHY,
RANKING MINORITY MEMBER



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 12, 2000

The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy:

The purpose of this letter is to present the views of the Department of Justice on S. 2058 and H.R. 3572, bills which would extend the deadlines for applying for adjustment of status to lawful permanent resident under section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), and section 902 of the Haitian Refugee Immigration Fairness Act (HRIFA). These deadlines expired on March 31, 2000. The Department supports a reasonable extension of the deadlines, in order to ensure that eligible individuals have a full opportunity to apply for adjustment under HRIFA and section 202 of NACARA. As both S. 2058 and H.R. 3572 provide such a reasonable extension, either is acceptable to the Department; however, the Department supports the provisions of H.R. 3572 as preferable to S. 2058, for the reason stated below.

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Sincerely,

A handwritten signature in black ink, appearing to read "Robert Raben", with a stylized flourish at the end.

Robert Raben
Assistant Attorney General

IDENTICAL LETTER TO BE SENT TO THE HONORABLE ORRIN G. HATCH,
CHAIRMAN

Extend amnesty program, INS says

Immigrants' rules to apply delayed

By Sean Scully
THE WASHINGTON TIMES

Tens of thousands of illegal immigrants avoided deportation last weekend as the Clinton administration granted them extra time to apply to stay in the United States under an amnesty program passed by Congress in 1997 and 1998.

Administration officials say it took an unexpectedly long time for the Immigration and Naturalization Service to draw up regulations to allow these immigrants to apply for amnesty. The rules were published March 24, only seven days before the deadline imposed by Congress, so immigrants — mostly Haitians, Cubans and Nicaraguans — should not be deported while Congress considers extending the deadline.

"It's justice ... effectively, the delay of the INS has terminated their rights, so we are proposing the deadline be extended to March 24, 2001," said Sen. Bob Graham, Florida Democrat, who supports the reprieve and is sponsoring a bill to extend the deadline.

The decision not to deport the immigrants does not apply to Elian Gonzalez, the 6-year-old Cuban boy at the center of an emotional international custody battle. He arrived in the United States long after Congress passed the amnesty law and is not eligible unless Congress itself changes the law on his behalf.

But some lawmakers say the administration should extend the same courtesy to Elian, granting him a reprieve while courts and Congress sort out his status.

"This child's fate should be decided in a family court," House Majority Leader Dick Armey, Texas Republican, said yesterday. "INS has really singled out this child for exceptional treatment."

The boy was rescued from the sea in November after a shipwreck in which his mother died while trying to make it to the United States.

Since then, his relatives in Miami have argued to keep him in the United States, while his father and Cuban President Fidel Castro have demanded his return to Cuba.

The Clinton administration has sided so far with Elian's father and Mr. Castro and has been pressing the Miami family to turn over the boy.

INS officials say the amnesty program has nothing to do with Elian's case. Mr. Graham agrees, saying the amnesty "is a completely different case" from Elian's.

INS spokesman Dan Kane said the agency will begin deportation proceedings against illegal Cubans, Haitians and Nicaraguans who have not applied for amnesty. But the INS "will not take the final step" of ejecting them from the country while Congress considers an extension.

He said the delay in creating the regulations for the eligible Cubans, Haitians and Nicaraguans was caused by delays in collecting comments on the regulations from other interested parts of the government.

"The INS made every effort to expedite the process," he said. "This was the best effort we could make."

Critics of the agency say the delay — and the administration's agreement not to deport the immigrants — is just another example of halfhearted enforcement by the INS.

"These sorts of announcements are not just illegal, they erode public confidence," said Dan Stein, executive director of the Federation for American Immigration Reform. "It takes away from the moral base of the immigration laws."

Supporters of Mr. Graham's bill say they are confident the Senate will agree to extend the deadline because key Republican leaders are supportive. Prospects in the House are less certain.

Rep. Lamar Smith, Texas Republican and chairman of the House subcommittee that deals with immigration policy, says he is in no mood to grant an extension to the illegal immigrants.

"Common sense says that if Americans can file their tax returns between January and April 17, then Haitians should be able to file the two-page amnesty applications in the generous year-and-a-half provided for in the law," he said in a written statement.

• Capitol Hill bureau chief Dave Boyer contributed to this report.

FAX TRANSMISSION

**IMMIGRATION AND NATURALIZATION SERVICE
OFFICE OF CONGRESSIONAL RELATIONS**

**425 I Street, NW
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To: *Tene*

Date: 3/28

From: Gerni

Fax#:
Telephone #:

Pages: 11 **including cover sheet**

Subject:

Comments:

HRIFA from 1998 —



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/10

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

DEC 22 1998

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: *for* Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Interim Field Guidance – Haitian Refugee Immigration Fairness Act of 1998.
(HRIFA)

PURPOSE: This memorandum provides comprehensive interim instructions on several enforcement and adjudications issues concerning the recently enacted Haitian Refugee Immigration Fairness Act (HRIFA). The guidance covers removals, stays of removal, waivers of stay, expedited removal and apprehensions outside a port of entry. The guidance also presents the HRIFA basic eligibility requirements, advance parole procedures, and custody determinations and redeterminations.

On October 21, 1998, President Clinton signed the Fiscal Year Appropriations Act, Pub. L. 105-277, into law. Division A, Title IX of that law, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), permits certain nationals of Haiti to adjust status to lawful permanent residence.

This memorandum is in effect immediately and shall remain in effect until further notice or until superseded by regulation.

Memorandum for Regional Directors

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Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)**I. Removal**

Section 902 of HRIFA provides for adjustment of status of certain Haitians. The INS will begin accepting applications for adjustment under HRIFA after publication of an interim rule in the Federal Register. Efforts are being made to expedite publication of this rule.

Eligible Haitians with final orders will not have to file motions to reopen, reconsider or vacate their order to apply for adjustment under HRIFA.

Until the interim rule is published in the Federal Register, the following guidance applies to the removal of Haitians whose orders are not the result of expedited removal proceedings. Expedited removal is covered in this memorandum under a separate heading below. (See VI.)

The removal of Haitian nationals who are clearly eligible for adjustment under HRIFA shall be held in abeyance. Haitians whom the INS believes are ineligible for adjustment under HRIFA will be provided with the Notice, attached to this memorandum as Appendix I, before they are removed. Consult with district counsel if there is doubt as to whether an alien is eligible for adjustment under HRIFA. The Notice advises the Haitian that the INS intends to remove him or her, and allows the alien an opportunity to assert eligibility to adjust status under HRIFA. The Notice shall be provided or read to the alien in a language the alien understands. A Creole translation of the Notice is also attached for use in appropriate cases. This Notice must also be provided to the alien's attorney or accredited representative of record, if any, as indicated by a completed G-28 or EOIR-28 in the A-file. The Haitian should be encouraged to contact his or her attorney or accredited representative or seek legal counsel.

If the Haitian completes the Notice and asserts his or her intention to apply for adjustment under HRIFA, the alien shall not be removed. Such aliens may be detained in accordance with the guidance below, under the part entitled "Custody Determinations and Redeterminations." (See IV.) If the Haitian completes the Notice to indicate that he or she does not intend to apply for adjustment under HRIFA, or if the Haitian refuses to complete the Notice, the alien shall be removed. Aliens will be given ten (10) business days to complete the Notice. Completed Notices shall be placed in the A-file and a copy given to the alien.

Haitian nationals whose removal is stayed under this memorandum shall continue to be under a stay for a period of 120 days after publication of the interim rule, to allow the alien to file an application for adjustment under HRIFA and to file for a stay based on that application.

Memorandum for Regional Directors

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Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

Once the interim rule is effective, field offices should look favorably on applications for stays filed on Form I-246, Application for Stay of Deportation/Removal, submitted by Haitians with final orders provided that they have filed for adjustment under HRIFA and do not appear to be clearly ineligible for relief under HRIFA.

II. Basic Eligibility

In general, certain Haitians are eligible to apply for adjustment of status to lawful permanent residence under section 902 of HRIFA, provided that an applicant:

- was present in the United States on December 31, 1995;
- 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 adjustment of status is filed, except that an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence or absences from the U.S. for any period or periods amounting to not more than 180 days.

In addition, in order to be eligible for HRIFA relief as a principal applicant, the alien must also be an individual who:

- filed for asylum before December 31, 1995; or
- was paroled into the U.S. before December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons deemed strictly in the public interest; or
- was a child at the time of arrival in the U.S. and on December 31, 1995, and who:
 - arrived in the U.S. without parents in the U.S. and has remained without parents in the U.S. since arrival;
 - became orphaned subsequent to arrival in the U.S.; or
 - was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment.

Additionally, the Haitian spouse, child, or unmarried son or daughter of a principal HRIFA applicant who adjusts status is also eligible to apply for the adjustment benefit. Dependent spouses and children are not required to have been present in the U.S. on

Memorandum for Regional Directors

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Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

December 31, 1995, or during any particular period since that date. However, an unmarried son or daughter must have been physically present in the U.S. for a continuous period since December 31, 1995, not counting any absence or absences totaling 180 days or less.

All HRIFA applicants must be otherwise admissible for permanent residence, except that in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4) (public charge), (5) (no labor certification), (6)(A) (unlawful entry), (7)(A) (no immigrant documents) and (9)(B) (unlawful presence for 180/365 days, plus a departure) of section 212(a) of the Immigration and Nationality Act shall not apply.

The following are examples of aliens who are ineligible for HRIFA benefits:

- (1) Aliens who clearly have not been physically present in the U.S. for a continuous period since December 31, 1995, (absences from the U.S. totaling 180 days or less do not defeat continuous physical presence). However, a Haitian spouse or child (i.e., unmarried son or daughter, less than 21 years of age) of a Haitian national who is eligible to adjust status under § 902 of HRIFA does not have to meet the continuous physical presence requirement; and
- (2) Aliens whose crimes render them inadmissible under INA § 212(a)(2), and who clearly do not qualify for any applicable exception or waiver. INA § 212(h) provides a waiver of some criminal grounds of inadmissibility, but aliens inadmissible based on drug trafficking, drug possession (other than 30 grams or less of marijuana), murder (including attempt and conspiracy), or crimes involving torture are ineligible for the waiver. Aliens who do not have a U.S. citizen or permanent resident spouse, parent, son, or daughter are also ineligible for the waiver. (Note also the exceptions under § 212(a)(2)(A) for certain youthful offenses and petty offenses.)

Again, consult with district counsel, if there is doubt as to whether an alien is eligible for adjustment under HRIFA.

Some other key points of HRIFA are:

- Adjustment applicants are not required to have been inspected or admitted. In addition, adjustment applicants need not have been paroled, unless the applicant claims eligibility based upon having been paroled into the United States prior to December 31, 1995.
- Adjustment applicants are not subject to the visa numerical limitations.

Memorandum for Regional Directors
Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

Page 5

- Adjustment applicants are also eligible to apply for employment authorization, although many will have already received permission to work based on an asylum application or the recent extension of work authorization for Haitian nationals who had been covered under the Deferred Enforced Departure (DED) program for Haitians. DED for Haitians expired on December 22, 1998; only the authorization to work was extended until December 22, 1999.
- Given certain Congressional reporting requirements contained in HRIFA, regulations must be published within six months (or by April 21, 1999) of the publication of the law. Applicants may file for adjustment 30 days after the publication of the interim rule, which should occur early during the second quarter of FY 99. The application period for principal applicants will continue through March 31, 2000. There is no application deadline for qualifying dependents.

III. Advance Parole

Haitian nationals eligible to adjust their status to lawful permanent residence under HRIFA who need to travel outside the United States may apply for advance parole. These applicants may fall into one of three categories:

- Haitians not in proceedings, who appear eligible for HRIFA, may generally be granted advance parole by the district director.
- Haitians in pending proceedings may be granted advance parole by the district director, provided the Service has agreed, or will agree, to administratively close the proceedings for the purpose of the applicant pursuing HRIFA adjustment, once the filing period begins. (Generally, if the applicant appears eligible for HRIFA, the Service will not oppose such administrative closure.) Before considering a Form I-131 application for advance parole, the district director must first make a decision on whether the Service intends to oppose administrative closure. Until the decision on administrative closure is made, advance parole should not be granted pursuant to this guidance. If the district director decides to oppose administrative closure, only the Assistant Commissioner for International Affairs may approve the I-131.
- A Haitian already under a final order of deportation or removal may be granted advance parole by the district director only if a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or

Memorandum for Regional Directors

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Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

Removal, and any required waivers (i.e., under section 212(e), 212(g), 212(h) or 212(i) of the Act) have been approved. If the alien departs without the I-212 being approved, the bar to reentry will apply.

Upon the effective date of the interim rule, only those Haitians who have applied for adjustment of status may be issued the I-512 parole document.

Whenever possible, Service files should be reviewed prior to the issuance of any advance parole. In questionable cases, consult your district counsel.

IV. Custody Determinations and Redeterminations

Haitians subject to mandatory detention shall not be released from custody based on future eligibility for relief under HRIFA. Eligibility under HRIFA may, however, be considered for purposes of discretionary custody determinations.

HRIFA's benefit provisions for Haitian nationals should be considered changed circumstances sufficient for discretionary relief where the alien appears clearly eligible to adjust under provisions of section 902. Where eligibility is unclear, the alien's possible eligibility shall be considered in discretionary decisions regarding continuation of custody.

V. Waiver of Stay

The INS may remove any Haitian protected from removal under this instruction if the alien makes a written request to be removed. If the alien is represented by counsel or an accredited representative, as indicated by a completed Form G-28 or EOIR-28 in the A-file, the alien's legal representative must be notified of the request prior to removal.

VI. Encounters at Ports of Entry and Expedited Removal

A Haitian applicant for admission shall be processed in accordance with established procedures, except in the case of an inadmissible Haitian who expresses a desire to file an adjustment application under § 902 of HRIFA. In that case, the alien shall be:

- advised that he or she cannot file an application for adjustment under HRIFA at the port, but that he or she will have the opportunity in the near future to initiate the application process from outside the United States; and
- given the opportunity to withdraw his or her application for admission.

Memorandum for Regional Directors

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Interim Field Guidance - Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)

If the alien does not wish to withdraw his or her application for admission, the alien will be processed in accordance with established procedures, which may include expedited removal, if appropriate.

VII. Aliens Apprehended Outside a Port of Entry

Haitians apprehended outside a port of entry should be processed in accordance with established procedures, subject to the instructions on stays and detention in this memorandum. Haitians should be carefully interviewed for purposes of obtaining information regarding potential eligibility for benefits under HRIFA, and the file should be appropriately annotated. Nothing in HRIFA prevents the INS from placing an alien in removal proceedings.

Nothing in this memorandum is intended to provide rights to aliens to be enforceable in any court of law.

For further information, contact E.B. Duarte, Jr., Branch Chief, Examinations Operations Facilitation Program, Headquarters Field Operations, (202) 514-7464, for adjudications-related issues and Lydia St. John-Mellado, Detention and Deportation, Headquarters Field Operations at (202) 514-4824 for enforcement-related issues.

Attachments

APPENDIX I**Notice to Certain Haitian Nationals
Of the Haitian Refugee
Immigration Fairness Act (HRIFA)**

Alien Name:

Alien A-Number:

Date of Birth:

Date Notice Provided:

Officer Providing Notice:

Language in Which Notice Was Provided or Read (circle one)

Name of Interpreter Used (if any)

This is to notify you of a new law in the United States, which allows certain nationals of Haiti to adjust their status and become lawful permanent residents. The new law is called the Haitian Refugee Immigration Fairness Act or HRIFA. To apply for permanent residence under HRIFA, you must file an application with the Immigration and Naturalization Service (INS). However, you cannot yet file this application because the INS has not finished developing the application procedures.

Not all Haitian nationals are eligible to adjust their status to that of permanent residents under HRIFA. The INS has reviewed your case and believes that you are not eligible for this benefit. Accordingly, the INS intends to remove you from the United States. However, if you believe that you are eligible for permanent residence and plan to apply under HRIFA, you may check the first box below and you will not be removed from the United States until you have had the opportunity to apply. Checking this box does not give you the right to be released from custody.

You are encouraged to contact your attorney (or accredited representative) or seek legal counsel regarding this decision. If you need a copy of HRIFA, please contact an INS detention officer. If you do not complete this Notice within ten (10) days of the date listed at the top of this Notice, the INS will remove you from the United States.

Please check one of the following:

/...../ I DO NOT want to be removed from the United States. I believe that I am eligible for permanent residence under HRIFA, and I intend to apply for permanent residence under HRIFA.

/...../ I WANT to be removed from the United States. I waive any rights I may have to apply for benefits under HRIFA at this time.

.....
Alien signature.....
Date

Imigrasyon Renouvélè Pèmi Travay Otomatikman Pou Ayisyen ki kalifie anba DED-a

Washington- Jodi-a, Imigrasyon renouvélè pèmi travay pou kèk Ayisyen ki kalifie yo, dekwa pou yo ka kontinué travay pandan ke Imigrasyon li min-m ap travay sou règlerman ke-l pral publié pou loua Ayisyen yo ki sot pase-a, sa ke nou rele “ Loua jistis Imigrasyon pou Réfujyé Ayisyen yo 1998. (Haitian Refugee Immigration Fairness Act (HRIFA) of 1998.

Renouvèlman sa-a ki publié kòm yon Avi nan Rejis Fédéral la, se sinpleman pou Ayisyen ki gen ti kat travay anba DED-a , Anba lòd ke Prézidan Clinton te pase Avoka Jeneral la pou yo te sispan-n depòte Ayisyen yo tanporèman.

Renouvèlman sa, se supò ke Administrasyon Prézidan Clinton lan kontinué ap ba komunoté ayisyèn lan e se komisé Imigrasyon-an Mme Doris Meissner ki fè deklarasyon sa-a. Nou vle asire ke Ayisyen ki kalifié yo kontinué travay pou supòte tèt yo ak fanmi-y yo pandan ke yap tan-n pou aplike pou rézidans yo.

Ti kat travay la ki ta dwe fini 22 desanm 1998 la anba seksyon “ 274A.12(A)(11)” lan ki sou fas ti kat la anba li-n ki ekri “Provizyon de loua-a”, kounie li valab pou juska 22 Desanm 1999.

Alò DED-a li min-m ap toujou fini 22 Desanm 1998 la , Se pèmi travay la sèlman kap toujou valab. Min sepandan, Imigrasyon pral voye Instruksyon bay tout ofisye-l yo, pou yo pa mete Ayisyen ki kalifie yo nan zafè jujman pou depòtasyon.

Epi tou ninpòt Ayisyen ki kalifié anba loua sa-a e ki potko jan-m aplike pou ti kat travay yo anba DED-a min-m, dwe fè sa avan 22 Desanm 1998 la. Si aplikasyon-an pa gentan rive nan Imigrasyon avan 22 desanm 1998 la, Imigrasyon pap aksepte-l.

Imigrasyon pral voye yon lèt konsènan renouvèlman sa-a bay tout moun ki kalifie yo nan dènye adrès ke-l genyen pou yo.

Ninpòt bòs travay ki vle poze kesyon sou renouvèlman sa-a ka rele INS

Office Business Liaison Employer Hotline nan 1-800-357-2099. Bès travay yo tou ka rele " Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline nan 1-800-255-8155. Anplwaye ak moun ki aplike yo ki vle poze kesyon ka rele OSC Employee Hotline nan 1-800-255-7688. Tande: Nou pap ka bay enfòmasyon sou afè Imigrasyon de yon moun an patikilè; se enfòmasyon jeneral sou renouvèlman Pèmi travay la selman ke nap bay.