DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a, and 299

[INS No. 1963–98; AG Order No. 2221–99]

RIN 1115–AF33

Adjustment of Status for Certain Nationals of Haiti

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) by establishing procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: *Effective date:* This interim rule is effective June 11, 1999.

Comment date: Comments must be submitted on or before July 12, 1999.

ADDRESSES: Please submit written comments, original and two copies, to Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1963–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, the President signed a Fiscal Year 1999 Omnibus Appropriations Act, Pub. L. 105–277 (112 Stat. 2681), into law. Division A, Title IX of that statute, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), contained a provision in section 902 which allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. Many aspects of section 902 of HRIFA are similar to corresponding aspects of section 202 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Pub. L. 105–100 (111 Stat. 2160, 2193). In drafting both the supplementary information and the regulatory text contained in this implementing regulation, the Department of Justice (Department) has intentionally replicated much of the rule which implemented NACARA, taking into consideration the Department's experience in administering that statute. Wherever beneficial for purposes of clarity, the Department has endeavored to point out those aspects of HRIFA which differ from corresponding aspects of NACARA.

How Does Section 902 of HRIFA Affect Haitian Nationals?

Section 902 of HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have 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 is filed (not counting any absence or absences totaling 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), other than those provisions specifically excepted by HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of HRIFA.

The five classes described in section 902(b)(1) are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were 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;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

For the last three ((3)–(5)) of these classes, the applicant must have been a child at the time of his or her arrival in the United States, and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In addition, certain family members of HRIFA beneficiaries are also eligible for adjustment of status under HRIFA.

What Are the Benefits of HRIFA?

An alien seeking adjustment of status under HRIFA is not subject to a number of the limitations on adjustment of status that would otherwise be applicable under section 245 of the Act.

First, a HRIFA applicant is not required to have been inspected and admitted or paroled into the United States.

Second, a HRIFA applicant is not subject to any of the barriers to adjustment contained in section 245(c) of the Act (e.g., the bars against aliens who have accepted or continued in unauthorized employment, aliens who remained in the United States longer than authorized, and aliens admitted as crewmen, in transit without visa, or under the visa waiver pilot program). Consequently, an alien who would otherwise be ineligible under section 245(c) may apply for adjustment under HRIFA.

Third, HRIFA applicants are not subject to the immigrant visa preference system requirements contained in sections 201 and 202 of the Act. Hence, neither the worldwide quota restrictions nor the per-country quota restrictions apply.

Fourth, applicants need not demonstrate that they are not inadmissible under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to adjust status under section 902 of Public Law 105–277. Accordingly, HRIFA allows an otherwise-qualified applicant to adjust status under HRIFA notwithstanding inadmissibility for likelihood of becoming a public charge, for failure to obtain a labor certification, for failure to meet certain requirements applicable to foreign-trained physicians, for failure to meet certain standards for foreign health-care workers, for entering or remaining in the country illegally, for violating documentary requirements relating to entry as an immigrant, or for

accruing more than 180 days of unlawful presence prior to the alien's last departure or removal.

Fifth, unlike those seeking to adjust status under other provisions of law, a HRIFA applicant who has been paroled into the United States and is now in exclusion or removal proceedings before an Immigration Court is not barred from filing an application for adjustment of status under the provisions of HRIFA while in such proceedings.

What Are the HRIFA Requirements Regarding Presence in the United States?

Under the terms of HRIFA, an eligible principal applicant must have been present in the United States on December 31, 1995. The physical presence requirement contained in HRIFA differs from the one contained in section 202 of NACARA in two key aspects. First, the date from which presence is required is December 31, 1995, instead of December 1, 1995. Second, HRIFA requires that an alien seeking adjustment as a principal applicant have been physically present in the United States on the specific date of December 31, 1995, while NACARA allowed the applicant to have commenced physical presence at any time on or prior to December 1, 1995.

HRIFA also requires that eligible applicants must have maintained continuous physical presence in the United States since December 31, 1995. However, HRIFA provides for an exception to the requirement of continuous physical presence under which an eligible alien who was present in the United States on December 31, 1995, is permitted to have been outside the United States for a total of up to 180 days in the aggregate since that date, and prior to the date of his or her adjustment of status to lawful permanent resident, without risk of interrupting his or her continuous physical presence. Except as otherwise provided, however, if an alien has been outside the United States for more than 180 days since December 31, 1995, the alien is not eligible for adjustment under HRIFA.

Furthermore, the Department is providing, by regulation, for three additional circumstances under which an alien may be outside the United States without that time affecting his or her eligibility for adjustment of status under HRIFA:

(1) If the Immigration and Naturalization Service (Service) has granted an alien an Authorization for Parole of an Alien into the United States (Form I–512), then the periods of time during which an alien is absent from the United States pursuant to such an authorization is not counted toward the 180-day cumulative period.

(2) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date the alien's request for parole authorization is filed at the Nebraska Service Center until the alien is paroled into the United States pursuant to that authorization in not counted toward the 180-day cumulative period.

(3) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date on which HRIFA was enacted (October 21, 1998) until 30 days from the effective date of this regulation is not counted toward the 180-day cumulative period. The Department is making this provision in order to allow an applicant for such parole authorization time to file the application with the Nebraska Service Center.

How Can a HRIFA Applicant Prove Physical Presence in the United States?

Section 902(b)(1) of HRIFA requires that an applicant must prove presence in the United States on December 31, 1995, but the statute is silent as to the methods by which an applicant may demonstrate his or her presence in the United States on that date. In this rule, the Department is providing that a HRIFA applicant may prove such presence in the United States through submission of evidence demonstrating that on or before December 31, 1995, he or she:

(1) was admitted to the United States in an immigrant or nonimmigrant classification;

(2) was paroled into the United States;

(3) was placed in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(4) was placed in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(5) applied for any benefit under the Act by means of an application establishing his or her presence in the United States;

(6) was issued other documentation by State and local authorities (such as school, hospital, police, and public assistance records), demonstrating the alien's presence in the United States on or prior to December 31, 1995; or

(7) in the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a qualified private or religious school.

Normally, an alien may make such a demonstration by submitting a photocopy of a Government-issued document. If the alien is not in possession of such document, but believes that a copy of the document is already contained in the Service file relating to him or her, he or she may submit a statement as to name and location of the issuing Government agency, the type of document and the date on which it was issued.

Because the applicant is required to establish presence in the United States on December 31, 1995, if the documentation submitted relates to a date prior to December 31, 1995, the applicant bears the additional burden of establishing either that he or she did not depart after the date on which presence has been established, or that (if he or she did depart) he or she returned to the United States on or prior to December 31, 1995. Doing so is analogous to proving continuity of presence, and if required, the applicant can meet this initial burden by using the methods described below for proving continuity of presence. While there are no particular criteria for establishing ''non-departure,'' or departure and return, the applicant should be prepared to resolve any doubts that may arise in this regard. The Department solicits comments from interested parties on issues related to this matter.

The Department believes that the evidentiary alternatives for establishing continuity of presence will also provide sufficient opportunities for qualified applicants to establish physical presence in the United States on December 31, 1995, without encouraging fraudulent applications. However, in order to ensure that no group of eligible aliens is precluded from establishing eligibility for HRIFA benefits, the Department is soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be. Commenters are encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.

A HRIFA applicant also must demonstrate that he or she was continuously physically present in the United States since December 31, 1995. *See* HRIFA section 9021(b)(2). As in the case of the physical presence requirement just discussed, however, the HRIFA statute is silent as to the methods by which an applicant can demonstrate that presence. This interim

rule provides that a HRIFA applicant may demonstrate continuity of physical presence in the United States through the submission of one or more documents issued by any governmental or non-governmental authority. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the documentation is normally signed or sealed), issued on letterhead stationery, or otherwise authenticated. In some cases, a single document may suffice to establish continuity for the entire post-December 31, 1995, period. In other cases, the alien may need to submit a number of documents. For example, a college transcript or an employment record may show that an applicant attended school or worked in the United States throughout the entire post-December 31, 1995, period. On the other hand, an applicant would need to submit a number of monthly rent receipts or electric bills to establish the same continuity of presence. While the Department neither requires nor wants the applicant to submit documentation to show presence on every single day since December 31, 1995, there should be no significant chronological gaps in the documentation either. Generally, a gap of 3 months or less in documentation is not considered significant. However, if the adjudicating officer or immigration judge is satisfied as to the continuity of the applicant's presence in the United States, he or she may accept considerably larger gaps in documentation. Conversely, if the adjudicating officer or immigration judge has reason to doubt the applicant's claim, he or she may require additional documentation. Furthermore, if the applicant is aware of documents already contained in his or her Service file that establish physical presence, he or she may merely list those documents, giving the type and date of the documents. Examples of such documents might include a written copy of a sworn statement given to a Service officer, the transcript of a formal hearing, or a Record of Deportable/Inadmissible Alien (Form I–213).

How Will the Department Evaluate the Evidence Submitted?

In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with Service and EOIR records having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the purview of the adjudicating authority (i.e., the Service or EOIR). It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency which the applicant desires to be considered in support of his or her application.

How Does an Applicant Establish Eligibility As an Alien Who Applied for Asylum or Was Paroled into the United States Prior to December 31, 1995?

Section 902(b)(1)(A) of HRIFA pertains to applicants who filed for asylum before December 31, 1995, and section 902(b)(1)(B) of HRIFA pertains to applicants who were paroled into the United States prior to December 31, 1995, either after having been identified as having a credible fear of persecution, or for emergent reasons or reasons deemed strictly in the public interest. The universe of persons falling into these two categories is both narrowly defined in scope and fully identifiable in Service records. The issue is one of locating the Service record that pertains to the particular applicant. In order to facilitate locating his or her record, an applicant who applied for asylum prior to December 31, 1995, should submit a copy of the first page of the Form I–589, Application for Asylum and Withholding of Deportation, filed at that time, or a copy of the receipt for such filing issued by the Service. In the case of an alien who was included as a dependent in the asylum application filed by a spouse or parent, a copy of the first page of that spouse or parent's application, or a copy of the filing receipt, will be sufficient, even if the relationship has since been altered through death, divorce, or the individual attaining the age of 21 years. If the applicant has lost both the receipt and his or her copy of the application which was filed, he or she may submit a statement giving as much information as possible about the date on which the application was filed and the location of the Service office to which it was submitted.

Likewise, if the applicant 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, he or she should submit a photocopy of the parole document (Form I–94, Arrival-Departure Record) issued at the time. If the parole document was lost or is otherwise not available, the applicant may submit a statement explaining what happened to the document and giving as much information as possible about the date of parole and location of the Service office which issued the parole.

What Provisions of the Statute Pertain Exclusively to Haitian Children in the United States?

Section 902(b)(1)(C) of HRIFA describes three groups of children who may adjust status to that of lawful permanent resident. Membership in all three groups is limited to those persons who were children both at the time of arrival in the United States and on December 31, 1995. Furthermore, all three groups require the occurrence of some qualifying event or events: for subsection (C)(i), the qualifying events are the arrival in the United States without parents and the continuation of such situation since arrival; for subsection (C)(ii), it is becoming an orphan subsequent to arrival; and for subsection (C)(iii), it is the abandonment by parents or guardians prior to April 1, 1998, and the continuation of such abandonment.

What Is Meant by the Terms ''Child'' and ''Parent?''

HRIFA mandates that, as used in HRIFA, the term ''child'' shall have the same meaning as that provided in the text above subparagraph (A) of section 101(b)(1) of the Act. That text defines a child as ''an unmarried person under twenty-one years of age.'' HRIFA, however, does not provide a definition of the term ''parent.'' In determining how this term should be defined for purposes of HRIFA, the Department looked at the statutory definition of that term contained in section 101(b)(2) of the Act, which states:

(2) The term ''parent'', ''father'', or ''mother'' means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term ''parent'' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

The circumstances giving rise to a parental relationship set forth in section 101(b)(1) are as follows:

(A) A child born in wedlock;

(B) A stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) A child legitimated under the law of the child's residence or domicile, or under the law of the father's residence

or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) A child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) A child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(F) A child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

In promulgating these regulations, the Department follows these definitions, with two notable exceptions. The first exception is that the discussion in section 101(b)(1)(F) pertaining to the qualifications of the petitioning United States citizen prospective parents is clearly irrelevant to HRIFA adjustment cases. The second is that the discussion of a child becoming an orphan through abandonment does not pertain to HRIFA adjustment cases because HRIFA mandates a separate standard for consideration as an abandoned child.

As previously noted, HRIFA provides that the term child is limited to persons who are both under age 21 and unmarried. Individuals who met the definition of child at the time of their arrival in the United States must also have met the definition on December 31, 1995. Any such persons who attained the age of 21 years or married prior to December 31, 1995, are not eligible for classification as a child under any of the three subcategories of section 902(b)(1)(C) of HRIFA. However, if otherwise eligible, they may seek classification as an asylum applicant under section 902(b)(1)(A) of HRIFA, as parolee under section 902(b)(1)(B) of HRIFA, or as a dependent under section 902(d)(1) of HRIFA.

An applicant who met the eligibility standard for adjustment of status as a child under section 902(b)(1)(C) of HRIFA would still be eligible for adjustment even if the individual has attained the age of 21 years or married after December 31, 1995. Furthermore, if an applicant described in section 902(b)(1)(C) acquired a spouse or stepchild through a marriage occurring after December 31, 1995, such spouse or stepchild may adjust status under section 902(d)(1) of HRIFA, if otherwise eligible, as a dependent of a principal applicant.

In general, it does not matter whether a principal applicant under section 902(b)(1)(C) was born in or out of wedlock, has been legitimated, or is an adopted child or a stepchild.

If a stepparent-stepchild relationship was created after the child turned 18, that relationship is not recognized under the Act. Therefore, for purposes of adjustment of status under HRIFA, any ''qualifying event'' involving such stepparent is immaterial. Likewise, if an adoption took place after a child reached the age of 16 years, no parent-child relationship exists under immigration law and any ''qualifying event'' involving such adoptive parent is also immaterial.

Where an applicant acquired a stepparent through the marriage of his or her parent, the applicant would have to establish a qualifying event relating to each of the parents and stepparents. For example, the deaths of a father and stepmother, while tragic, do not make a child an orphan if his or her mother and stepfather are still alive.

On the other hand, if a child was adopted prior to age 16, only a qualifying event which involved the adopting parent or parents is relevant. A qualifying event which pertained to a parent whose relationship to the child had been severed by the adoption process is immaterial.

In Haiti, a child who was born out of wedlock and not acknowledged by the father or otherwise legitimated is illegitimate. Such child is deemed under the Act to have only one parent, the mother. However, under the Civil Code of Haiti, all children born out of wedlock and acknowledged by the father are legitimate. Such children are deemed under the Act to have two parents.

Finally, it should be noted that the term ''parent'' does not include foster parents or guardians.

How Does an Applicant Establish Eligibility as a Child Without Parents in the United States or As an Orphaned or Abandoned Child?

Children Without Parents in the United States

With regard to the specific subcategories of section 902(b)(1)(C) of HRIFA, the first pertains to children who arrived in the United States without parents and have remained without parents in the United States. Since the term ''without parents in the United States'' is not defined in the Act, the common meaning of the words will prevail. If the applicant had any parents, as discussed above, in the United States at the time of his or her arrival, or at any time since arrival, he or she is not eligible for classification under this subcategory. If even one of the applicant's parents was living in the United States during this period, the applicant is ineligible for classification under this subcategory, regardless of whether the applicant lived with or received any support from such parent.

In order to establish eligibility under this subcategory, an applicant should establish that his or her parents were either deceased or physically outside the United States both at the time of the applicant's arrival in the United States and at all times since then. If the location of the applicant's parents was unknown at the time of arrival and at all times since, the applicant must establish such facts through court records or other pertinent documents.

Children Who Became Orphans Subsequent to Arrival

Section 902(b)(1)(C)(ii) of HRIFA pertains to persons who became orphaned after their arrival in the United States. We recognize that section 101(b)(1)(F) of the Act describes orphans as children who became orphaned through the death or disappearance of, abandonment or

desertion by, or separation or loss from, both parents, or the irrevocable release by the sole or surviving parent who is unable to provide support. However, the Department believes that section 902(b)(1)(C)(ii) relates to a narrower definition of the term orphan, pertaining only to those children who were orphaned through the death or disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent). The Department reached this conclusion based on the fact that Congress chose to include children who arrived in the United States without parents and children who had been abandoned by parents or guardians in the other two subcategories, an action which would have been meaningless had Congress intended to use the broader definition of the term orphan for purposes of section 902(b)(1)(C)(ii). In order for an applicant to be classified as an orphaned child under this subcategory, the application must be supported by:

- The death certificates of both of his or her parents, or the death certificate of the sole parent, showing that the death occurred after the date of the applicant's arrival in the United States and prior to his or her 21st birthday, or
- Evidence from a competent authority (such as a court or government agency having jurisdiction and authority to make decisions involving child welfare) establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent) after the applicant's arrival in the United States and prior to his or her 21st birthday.

Children Who Have Been Abandoned

Section 902(b)(1)(C)(iii) of HRIFA pertains to children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned. The four key elements that an applicant must establish are: that the abandonment occurred prior to April 1, 1998; that the applicant was under 21 years of age and unmarried at the time of such abandonment; that the parents or guardians were the parties who took the action to abandon the applicant; and that the relationship has not been re-established since such abandonment. A child who voluntarily left the home of his or her parents would not fall within this category. An applicant seeking consideration as an abandoned child should submit evidence from court records or child welfare agencies to establish such abandonment.

The Department assumes that in most cases an abandoned child would be brought to the attention of local child welfare agencies who would then assure that the child is declared a ward of the court. The relating agency and court records would establish such. However, the regulations do not rule out the possibility of the applicant using other documentation in support of his or her claim. The Department solicits comments from interested parties on this assumption.

What Weight is Given to Existing Service Records?

In general, as with all applications and petitions under immigration law, the burden of proof is on the applicant to prove eligibility for adjustment of status under section 902 of HRIFA. In the case of many persons who arrived in the United States as children, evidence pertaining to the applicant's eligibility is already contained in Service records. If Service records show the applicant arrived without parents, as an orphan, or was brought to the Service as a subsequently abandoned child and placed into (and remains in) some sort of custody arrangement, there is a rebuttable presumption that the alien falls within the eligible class. The Department feels that such individuals are entitled to this rebuttable presumption due to the verifiability of the information in Service records.

Other potential applicants for classification under section 902(b)(1)(C) of HRIFA may not have been placed into a custody situation through the Service program. For example, persons who were already over the age of 18 at the time of their arrival in the United States, persons who entered without inspection and were never brought to the attention of the Service, and children who were abandoned subsequent to their arrival without such abandonment being reported to the Service, could all fall within the purview of section 902(b)(1)(C) of HRIFA. Such persons may still be able to qualify for adjustment of status, but must meet the burden of proof without the benefit of any presumption of eligibility. An applicant for benefits under this provision must provide all reasonably available evidence of eligibility, including pertinent death certificates, police reports, child welfare agency reports, etc. Such documents must have been created at the time of the event in question, or within a reasonable time thereafter, and must bear any appropriate signatures, seals, or other authenticating instruments.

How Does Admissibility to the United States Affect Eligibility for Adjustment of Status Under HRIFA?

The grounds of inadmissibility specified in paragraphs (4) (public charge), (5) (lack of labor certification), (6)(A) (illegal entry), (7)(A) (immigrant not in possession of an immigrant visa or other valid entry document), and (9)(B) (unlawful presence) of section 212(a) of the Act do not apply to HRIFA applicants.

An applicant who is inadmissible under any of the other grounds of inadmissibility listed in section 212 of the Act is ineligible for adjustment of status under HRIFA, unless he or she receives a waiver of that ground of inadmissibility.

A HRIFA applicant who is eligible for an individual waiver of a ground of inadmissibility not exempted by HRIFA may file an application for the waiver concurrently with his or her application for adjustment of status. Adjustment of status may not be granted unless the waiver has first been approved. For the purpose of adjudicating applications for benefits under HRIFA, the Director of the Nebraska Service Center has been given the authority to adjudicate applications for waivers under sections 212(e), 212(g), 212(h), and 212(i) of the Act, as well as applications for permission to reapply for admission after deportation or removal, including those filed in conjunction with requests for parole from outside the United States.

How Do the Provisions of HRIFA Affect Dependents of Haitian Nationals?

The provisions of HRIFA at section 902(d) address the eligibility requirements for certain dependents of principal HRIFA beneficiaries. To receive HRIFA benefits as a dependent of a HRIFA beneficiary, an alien must be: a national of Haiti; the spouse, child (i.e., under 21 years of age and unmarried), or unmarried son or daughter (i.e., 21 years of age or older) of a HRIFA principal beneficiary at the time of the principal beneficiary's adjustment of status to that of permanent resident; and admissible to the United States under section 212(a) of the Act, not including those provisions specifically excepted by HRIFA. The dependent's relationship to the HRIFA beneficiary must continue to exist at least through the time that the dependent is granted adjustment of status.

HRIFA dependents must be physically present in the United States in order to apply. A spouse or child need not have been present on

December 31, 1995, or during any particular period since that date. Although an unmarried son or daughter need not have been present in the United States on December 31, 1995, he or she must establish that he or she has been physically present in the United States for a continuous period commencing not later than December 31, 1995, not counting absences aggregating 180 days or fewer. Unlike section 202 of NACARA, section 902 of HRIFA does not specify a deadline by which the dependent's application for adjustment of status must be filed.

Many qualifying dependents of HRIFA principal applicants may be able to receive HRIFA benefits in their own right. However, some persons who do not meet the HRIFA standards will only be able to qualify as a dependent of a HRIFA beneficiary. Examples of otherwise eligible persons who can only qualify as dependents include: a spouse or child who arrived in the United States after December 31, 1995; a spouse or child who arrived before December 31, 1995, but has been absent for an aggregate of more than 180 days since that date; and an unmarried son or daughter who came to the United States prior to December 31, 1995, but neither entered as a parolee nor filed for asylum before that date.

How Are Dependents Who Do Not Meet HRIFA Requirements Affected?

A family member who is unable to qualify for HRIFA adjustment of status on his or her own, or as a dependent, may eventually become eligible for lawful permanent resident status under other provisions of the Act. Examples of such individuals would include a dependent who is not a national of Haiti, a spouse or child whose relationship to the principal applicant is established after the principal applicant is granted permanent resident status, and an unmarried son or daughter over the age of 21 who entered the United States after December 31, 1995. After becoming a permanent resident, a HRIFA beneficiary could file a visa petition to accord such a dependent immigrant classification under section 203(a)(2) of the Act, thereby enabling the dependent who is not eligible for HRIFA benefits to seek immigration to the United States through the normal family-based immigration process.

Can a Haitian Who Is, or Has Been, Covered Under the Deferred Enforced Departure (DED) Program Established by Order of the President on December 23, 1997, Apply for Adjustment of Status Under HRIFA?

Yes, if he or she is otherwise eligible for adjustment of status under section 902 of HRIFA.

What Happens If an Applicant Is Already in Exclusion, Deportation, or Removal Proceedings, or Has a Motion To Reopen or Motion to Reconsider Pending Before the Immigration Court or the Board of Immigration Appeals (Board)?

Persons who have proceedings pending before the Immigration Court or the Board, or persons who have a pending motion to reopen or reconsider filed on or before May 12, 1999, may apply for adjustment of status under section 902 of HRIFA, but these cases shall remain with the court holding jurisdiction over the pending proceedings.

Proceedings Pending Before the Immigration Court

If an alien (other than an arriving alien who has not been paroled into the United States) is in exclusion, deportation, or removal proceedings before the Immigration Court, or if an alien has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before the Immigration Court, jurisdiction over an application for adjustment of status under section 902 of HRIFA shall lie with the Immigration Court. The procedure for filing an application for adjustment under HRIFA is described below. If an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and who has a pending motion to reopen or motion to reconsider, files an application for adjustment of status under section 902 of HRIFA, the Immigration Court shall reopen the alien's proceedings for consideration of the adjustment application. Applications shall be subject to the filing requirements of 8 CFR 3.11 and 3.31. A person would be ''clearly ineligible'' if, for example, he was not a national of Haiti or he was not a child on December 31, 1995, and had not filed for asylum or been paroled into the United States prior to that date.

Proceedings Pending Before the Board

In the case of an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and whose case is on appeal with the Board, the Board shall remand the proceedings to the Immigration Court for the sole purpose of adjudicating the application for adjustment. The Board shall so remand the case regardless of whether the alien has already filed an application for adjustment of status under HRIFA. Further, if an alien has a pending motion to reopen or motion to reconsider filed with the Board on or before May 12, 1999, the Board shall reopen and remand the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA.

If upon remand the Immigration Court denies the application, or the alien fails to file an application for adjustment under section 902 of HRIFA, the Immigration Court shall return the case to the Board by certification. This will allow the Board to consider the denial of the HRIFA application as well as all other outstanding issues from the previously pending appeal or motion. Neither the alien nor the Service shall be required to file another Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26), or to pay an appeal filing fee, because the Immigration Court's certification of the denial to the Board will automatically transfer the Immigration Court's decision to the Board.

May an Alien Who Is in Proceedings Before an Immigration Court or the Board of Immigration Appeals Apply for Adjustment of Status Before the Service?

Yes, under certain circumstances. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board may move to have the proceeding administratively closed for the purpose of filing an application for adjustment under HRIFA. Such administrative closure requires the consent of the Service, which will issue field guidance shortly regarding the circumstances under which it will consent to such a request. If the Service concurs in such motion, the Immigration Court or the Board, as appropriate, will administratively close the proceedings. Such closure will permit recalendaring or reinstating of the closed proceedings if, for example, the alien fails to file an application for adjustment of status under HRIFA before April 1, 2000, or the Service denies any application for adjustment of status filed by the alien under HRIFA. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the exclusion, deportation, or removal proceedings. The Immigration

Court or the Board, as appropriate, will then recalendar or reinstate the proceedings. In the case of a HRIFA adjustment application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings.

What Happens If the Alien's Exclusion, Deportation, or Removal Proceedings Have Already Been Administratively Closed for Reasons Unrelated to HRIFA?

Aliens who have had their cases administratively closed or continued indefinitely with the consent of the Service after December 22, 1997, shall apply for adjustment of status under HRIFA with the Service. Such aliens may not seek reinstatement of their proceedings for the purpose of applying for adjustment of status under HRIFA with EOIR until the Service has adjudicated the adjustment application. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the proceedings and the proceedings will be recalendared or reinstated by the Immigration Court or the Board, as appropriate. In the case of an application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings. This procedure simplifies the application process by directing all applications to one location and obviating the need to file motions to recalendar or reinstate proceedings.

What Happens If an Applicant Is the Subject of a Final Order of Exclusion, Deportation, or Removal?

An alien who is the subject of a final order of exclusion, deportation, or removal, and who has never filed an application for adjustment of status under section 902 of HRIFA with the Immigration Court, must file such application with the Service. However, if such alien has a motion to reopen or a motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, then the application for adjustment must be filed with the Immigration Court or with the Board, as appropriate. The mere filing of an application for adjustment of status under section 902 of HRIFA with the Service or the referral of a denied application to an Immigration Court does not stay the execution of the final order of removal. To request that execution of the final order be stayed by the Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6. If the application is referred to the Immigration Court, and the Service does not grant a stay of execution of the final order, the alien must request that the Immigration Court or Board specifically grant a stay of execution of the final order of removal.

When Can an Application Be Filed?

For principal applicants, the application period for HRIFA benefits begins June 11, 1999, and ends on March 31, 2000.

For dependent applicants, the application period for HRIFA benefits begins June 11, 1999, and remains open indefinitely. As previously noted, the requisite familial relationship between the dependent applicant and the principal applicant must exist at the time the principal applicant becomes a permanent resident, and must continue at least until the dependent is granted adjustment of status.

What Forms and Other Documents Should Be Filed?

Each applicant for HRIFA adjustment of status benefits must file a separate Application to Register Permanent Residence or Adjust Status (Form I–485), accompanied by the required application fee and supporting documents described below. HRIFA applicants should complete Part 2 (Application Type) of that form by checking box ''h—other'' and writing ''HRIFA—Principal'' or ''HRIFA—Dependent'' next to that block. Each application must be accompanied by the required initial evidence, as follows:

(1) A birth certificate or other record of birth;

(2) A completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age;

(3) A report of medical examination;

(4) Two photographs as described in the Form I–485 instructions;

(5) A copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence of inspection and admission or parole into the United States, if applicable;

(6) If the applicant is at least 14 years of age, a local police clearance from each jurisdiction where the alien has resided for 6 months or longer since arriving in the United States (although the regulation does allow this particular requirement to be waived under certain circumstances);

(7) If the applicant is a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(9) to establish presence in the United States on December 31, 1995;

(8) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(10) to establish continuity of physical presence in the United States since December 31, 1995;

(9) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, a statement showing all departures from and arrivals in the United States since December 31, 1995;

(10) If the applicant is a principal applicant, evidence that he or she falls within one of the five groups of persons eligible for HRIFA adjustment as described in 8 CFR 245.15(f)(12);

(11) If the alien is applying as the spouse, child, or unmarried son or daughter of another HRIFA beneficiary, evidence of the relationship (for example, a marriage certificate); and

(12) If the applicant acquired Haitian nationality through naturalization in that country, a copy of his or her Haitian naturalization certificate.

Must the Applicant Be Fingerprinted?

Yes, if the applicant is 14 years of age or older. Upon receipt of the application, the Service will instruct the applicant regarding procedures for obtaining fingerprints through one of the Service's Application Support Centers (ASCs) or authorized Designated Law Enforcement Agencies (DLEAs) chosen specifically for that purpose. Those instructions will direct the applicant to the ASC or DLEA nearest the applicant's home and advise the applicant of the date(s) and time(s) fingerprinting services may be obtained. Applicants should not submit fingerprint cards as part of the initial filing.

Is There a Fee for Filing This Application?

HRIFA adjustment of status applications must be submitted with the fee required by 8 CFR 103.7(b)(1) for Form I–485 (currently $220 for applicants 14 years of age or older, and $160 for applicants under age 14). In addition, if the applicant is 14 years of age or older, he or she must submit the fee of $25 to cover fingerprinting costs. If the application is submitted to the Nebraska Service Center, this $25 fee must accompany the application being submitted to that Center. If the application is submitted to an Immigration Court or the Board of Immigration Appeals, the fees must be submitted to the appropriate local office of the Service in accordance with 8 CFR 3.31. An applicant who is deserving of the benefits of section 902 of HRIFA and

is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

How and Where Should the Application Be Filed?

If the applicant is not in exclusion, deportation, or removal proceedings before an Immigration Court or the Board of Immigration Appeals, or if the applicant has had his or her case administratively closed or continued indefinitely, the application and attachments must be submitted by mail to: USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501–7245.

If the applicant is in proceedings pending before an Immigration Court or the Board of Immigration Appeals, or if the applicant has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, the application and attachments must be submitted to the Immigration Court with jurisdiction over the case or to the Board if the Board has jurisdiction. In cases before the Immigration Court or the Board, the application fee should be submitted to the Service pursuant to 8 CFR 3.31, as provided above. (If the motion to reopen or motion to reconsider is filed after May 12, 1999, jurisdiction over the application for adjustment of status under HRIFA lies with the Service, not with EOIR.)

Applications for adjustment of status under HRIFA may not be submitted to any other Service location or to any consular post.

Can Someone Else Sign the Application if the Applicant Is a Child or a Person Who Is Mentally Incompetent?

In accordance with 8 CFR 103.2(a)(2), an application may be signed by a parent or legal guardian if the applicant is under 14 years of age, and by a legal guardian if the applicant is mentally incompetent. However, a person who is under age 14 is not precluded from signing the application if he or she is capable of understanding the significance of the attestation.

Will an Applicant Filing an Application for Adjustment of Status With the Service Under HRIFA Be Required To Appear Before the Service for an Interview?

The decision whether to require an interview is solely within the discretion of the Service, which may elect to waive the interview of the applicant. The interim regulations provide that the Service may waive the interview if the application and supporting evidence, including Service records, verify that the alien is either clearly eligible or clearly ineligible for adjustment of status. If the application is adjudicated without interview, a notice of the decision will be mailed to the applicant. When an interview is required, the application will be forwarded to the local Service office having jurisdiction over the applicant's place of residence. The applicant will be notified of the date and time to appear for the interview. If an applicant fails to appear for an interview, the application may be denied in accordance with existing regulations.

Can an Applicant Be Authorized To Work While the Application is Pending?

If the alien has already received work authorization under any other provision of the Act, that work authorization will not be affected by the filing of an application for adjustment of status under HRIFA or by the administrative closure of the exclusion, deportation, or removal proceeding to pursue relief pursuant to HRIFA. Furthermore, an applicant for adjustment under HRIFA is able to apply for, and be granted, an extension of any such employment authorization for which he or she remains eligible.

On December 14, 1998, the Service published a notice in the **Federal Register** at 63 FR 68799 which provided for an automatic extension until December 22, 1999, of the validity of certain Employment Authorization Documents (EADs) issued to Haitian nationals pursuant to the Deferred Enforced Departure (DED) program. This was done as a transitional measure to afford Haitian beneficiaries of DED the opportunity to apply for a HRIFA-based EAD. In accordance with that notice and subsequent guidance to Service field offices, the EADs covered by the automatic extension include those bearing an expiration date of December 22, 1998, or later, and either the notation ''274a.12(A)(11)'' under ''provision of law'' or the notation ''A–11'' under ''category.''

Any applicant for adjustment of status under HRIFA who wishes to obtain initial employment authorization, or continued employment authorization when his or her prior authorization expires, during the pendency of the adjustment of status application, may file an Application for Employment Authorization (Form I–765) with the Service.

For those applicants whose cases are supported by evidence which can be verified through Service records, this interim rule provides that employment authorization may be granted upon filing of the application for adjustment and an application for employment authorization.

In all other cases, the Service will not grant applications for work authorization filed by HRIFA applicants until the application for adjustment is approved or has been pending for 180 days, whichever comes first. This approach is in keeping with section 902(c)(3) of HRIFA, which mandates approval of employment authorization if the adjustment application ''is pending for a period exceeding 180 days,'' and has not been denied, and which authorizes, but does not mandate, approval of employment authorization if the application has been pending for fewer than 180 days.

The Service will emphasize the potential benefits of filing for adjustment of status and employment authorization concurrently during public information sessions that the Service will hold with local community groups. The Department believes that limiting employment authorization to these circumstances and to circumstances in which 180 days have elapsed since the filing of the application will both: (1) Discourage fraudulent applications filed simply as a way to gain work authorization, and (2) permit employment more promptly for those whose applications appear likely to be granted. However, in publishing this interim rule, the Department solicits the views of interested parties on this topic.

Can an Alien Submit an Application for Adjustment of Status If He or She Is Outside the United States?

No. The statute and regulations require that an alien must be physically present in the United States in order to properly file an application. However, a special provision at 8 CFR 245.15(t)(2) allows an otherwise-eligible alien who is outside the United States to submit a request for parole authorization. This special provision is similar to the one contained in the implementing regulations for NACARA. Because of the similarity in the two statutes, the Department has decided to treat the beneficiaries of NACARA and HRIFA in the same manner. These provisions, however, cannot and do not create any additional parole authority, because a parole can only be issued under the Attorney General's discretionary authority contained in section 212(d)(5) of the Act. The provisions merely specify that the requests be filed with, and adjudicated by, the director of the designated service center. For NACARA applications, the designated service center is the Texas Service Center; for HRIFA applications, it is the Nebraska

Service Center. The regulatory authority of the Director of the Nebraska Service Center to adjudicate such requests will expire on March 31, 2000.

An alien requesting parole under this special provision should attach photocopies of the documents the alien intends to file in support of his or her claim for eligibility for adjustment of status under HRIFA if the parole authorization is granted. Parole authorization may be granted, as a matter of discretion, if, upon review of the application for parole authorization and related documents, it is determined that the application for adjustment of status is likely to be approved once it has been properly filed. The alien would be allowed to file the application after being paroled into the country. Accordingly, an alien who is otherwise inadmissible must remain outside the United States until the request for parole authorization is approved. If the alien attempts to enter the United States without the parole authorization, he or she could be found inadmissible to, and removed from, the United States.

Can an Applicant Travel Outside the United States While the Application Is Pending?

Nothing in HRIFA authorizes the Service to allow an applicant to re-enter the United States without proper documents. If an applicant plans to leave the United States to go to any other country before a decision is made on his or her HRIFA adjustment application, he or she should contact the Service to request advance authorization for parole. If an applicant leaves the United States without such advance authorization, action on his or her HRIFA adjustment application may be terminated and the application may be denied. An applicant may also experience difficulty when returning to the United States if he or she does not have such advance authorization. Furthermore, any absence from the United States without an advance parole authorization issued prior to the alien's departure counts toward the 180-day aggregate time period that the applicant is allowed to be outside the United States.

What Is the Status of an Alien Who Is Under a Final Order of Exclusion, Deportation, or Removal and Who Departs From the United States?

Such alien would be a ''self-deport'' and would be subject to the inadmissibility provisions of section 212(a)(9) of the Act. This is true regardless of whether the alien obtained an Authorization for Parole of an Alien Into the United States (Form I–512) prior to departure. While being inadmissible would not preclude the alien from being *paroled* into the United States, it would preclude the alien from being *admitted* to the United States or being granted an adjustment of status, unless the alien first applied for and was granted permission to reapply for admission into the United States.

How Can Such an Alien Apply for Permission to Reapply for Admission into the United States?

An alien needing such permission may file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212), in accordance with the instructions on that form. Form I–212 may be filed prior to the alien's departure. Persons needing such forms may obtain them through the Service's Forms Center at 1–800–870–3676.

What Documentation Will Be Issued If the Adjustment Application Is Approved?

After processing is completed, a notice of the decision will be mailed to the HRIFA applicant. Applicants should keep this notice for their records. If the application has been approved, a permanent resident card will be mailed separately to the applicant. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the HRIFA adjustment of status application. If the applicant is not in possession of a passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting Alien Documentation, Identification, and Telecommunication System (ADIT) specifications so that the Service may prepare and issue temporary evidence of lawful permanent residence status.

Is There Any Special Action That an Applicant Who Had Been in Exclusion, Deportation, or Removal Proceedings Must Take Once the Application Has Been Approved?

No. If the alien previously had been issued a final order of exclusion, deportation, or removal, such order shall automatically be deemed canceled as of the date of the approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall automatically be deemed terminated as of the date of approval of the application for adjustment of status.

What Happens if an Application is Denied by the Service?

If the Service finds that an applicant is ineligible for adjustment of status under HRIFA, the Service will advise him or her of its determination and of the applicant's right to seek, and the procedures for seeking, consideration of the application by an immigration judge. Depending on the individual case circumstances, those procedures could take one of three different routes as follows:

(1) If exclusion, deportation, or removal proceedings had never been commenced, the Service will issue a Notice to Appear, thereby initiating removal proceedings during which the applicant may renew his or her application for adjustment under HRIFA before the Immigration Court. In such proceedings, an immigration judge shall adjudicate the renewed application.

(2) If exclusion, deportation, or removal proceedings had been initiated and later administratively closed, the Service will advise the alien of the Service's denial of the HRIFA adjustment application and will move the Immigration Court, or the Board if at the time of administrative closure the Board had jurisdiction over the case, to recalendar or reinstate the proceeding. The previously closed removal proceedings will then be recalendared by the Immigration Court, or reinstated by the Board, as appropriate.

(3) If a final order of exclusion, deportation, or removal had been issued, the Service, using Form I–290C, Notice of Certification, will refer its decision to deny the HRIFA adjustment application to the Immigration Court, which will adjudicate the application in proceedings designed solely for the purpose of such adjudication.

What Happens If an Application Is Denied by the Immigration Court?

If the Immigration Court denies the HRIFA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was remanded to the Immigration Court by the Board, the Immigration Court shall certify the decision to the Board for review.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was referred by the Service for a HRIFA-only inquiry, the alien shall have the right to appeal the decision to the Board, subject to the requirements in 8 CFR parts 3 and 240 governing appeals from Immigration Courts to the Board, including the requirements of filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) and paying the filing fee.

What Happens If an Alien Fails To Appear for a Hearing Before the Immigration Court on a HRIFA Adjustment Application?

An alien must appear for all scheduled hearings before an Immigration Court, unless his or her appearance is waived by the Immigration Court. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court, and who fails to appear for a hearing regarding a HRIFA adjustment application, will be subject to the applicable statutory and regulatory *in absentia* procedures (i.e., section 242B of the Act as it existed prior to the amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on September 30, 1996, for deportation proceedings, and section 240 of the Act as amended by IIRIRA for removal proceedings).

What Rules of Procedure Apply in HRIFA-Only Hearings Conducted on Cases Referred by the Service to the Immigration Court?

Although an alien who is placed before the Immigration Court for a HRIFA-only hearing after referral on a Notice of Certification (Form I–290) to the Immigration Court by the Service is not specifically subject to the statutory and regulatory provisions governing exclusion, deportation, and removal proceedings, the Department has inserted language in this interim rule reflecting the standards in section 240 of the Act for removal proceedings, including the *in absentia* procedures. Absent specific statutory direction in this area, the procedures of section 240 of the Act were chosen because such procedures are similar to those from the pre-IIRIRA section 242B of the Act and indicate Congress' most recent preference to have procedures dealing with failures to appear for immigration proceedings. Use of the language from section 240 of the Act also ensures that the *in absentia* procedures used for those in HRIFA-only proceedings are consistent with the *in absentia* procedures applicable to aliens who file HRIFA adjustment applications in ongoing removal and deportation proceedings.

As for those aliens who, upon reopening and remand by the Board to the Immigration Court, fail to file a HRIFA adjustment application with the Immigration Court, the immigration judge will certify the case back to the Board for consideration of the previously pending appeal or motion. If, prior to receiving a final order from the Board, the alien subsequently requests a remand to file a HRIFA adjustment application, the Board shall remand the case to the Immigration Court, unless the alien is clearly ineligible for such relief.

May an Applicant Who Receives a Final Determination by the Service, the Immigration Court, or the Board Denying His or Her Application of HRIFA Adjustment Appeal That Decision to a Federal Court?

No. While the regulations provide for various avenues for administrative review of negative HRIFA determinations, section 902(f) of HRIFA provides that ''[a] determination by the Attorney General as to whether the status of any alien should be adjusted under [HRIFA] is final and shall not be subject to review by any court.''

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B). Section 902 of HRIFA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of that section and allow Haitian nationals to apply for and obtain the benefits available to applicants for adjustment of status under HRIFA as soon as possible in light of the statutory application deadline of March 31, 2000.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Haitian nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485, Supplement C) was submitted to the Office of Management and Budget (OMB) for emergency review and approval under 5 CFR 1320.13(a)(1)(i) and (a)(2)(iii). In a notice published in the **Federal Register** on April 2, 1999 at 64 FR 15990, the Immigration and Naturalization Service notified the public of the proposed

information collection contained in Form I–485 Supplement C. The information collection requirement in this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public Law 105–277 is eligible to become a permanent resident of the United States. The estimated total number of respondents is 50,000 and the amount of time estimated for an average respondent to respond is 30 minutes for a total public burden of 25,000 hours.

This information collection request has been approved by OMB and has an OMB Number of 1115–0229. The emergency approval is only valid for 180 days. Comments and suggestions concerning the information collection are encouraged and will be accepted until June 1, 1999. To obtain a copy of the collection instrument or to make comments on this information collection you may contact Mr. Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. Section 3.1 is amended by revising paragraph (b)(12) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I–290C) to the Immigration Court in accordance with §§ 245.13(n)(2) and 245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 245.13(d)(2) and 245.15(e)(2) of this chapter.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 212.2 is amended by:

a. Removing the words ''An applicant'' and adding in their place the words ''Except as provided in paragraph (g)(3) of this section, an applicant'' in the first sentence in paragraph (d);

b. Removing the words ''If the applicant'' and adding in their place the words ''Except as provided in paragraph (g)(3) of this section, if the applicant'' in the second sentence in paragraph (d); and by

c. Adding a new paragraph (g)(3), to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) If an alien who is an applicant for parole authorization under § 245.15(l) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I–212 or Form I–601 at the Nebraska Service Center concurrently with the Form I–131, Application for Travel Document.

* * * * *

5. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iii);

b. Removing the word ''or'' at the end of paragraph (b)(2)(ii);

c. Removing the period at the end of paragraph (b)(2)(iii) and inserting in its place a ''; or''; and by

d. Adding a new paragraph (b)(2)(iv), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) * * *

(1) * * *

(iii) *Parole authorization applicant under § 245.15(l).* An applicant for parole authorization under § 245.15(l) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I–601 with the Director of the Nebraska Service Center considering the Form I–131.

* * * * *

(b) * * *

(2) * * *

(iv) The Nebraska Service Center, if the alien is outside the United States and seeking parole authorization under § 245.15(l)(2) of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 240.1 [Amended]

7. In § 240.1, paragraph (a)(1)(ii) is amended in the first sentence by removing the words ''and section 202 of Pub. L. 105–100'' and adding in their place the words '', section 202 of Pub. L. 105–100, and section 902 of Pub. L. 105–277''.

§ 240.11 [Amended]

8. In § 240.11, paragraph (a)(1) is amended in the first sentence by removing the words ''or section 202 of Pub. L. 105–100,'' and adding in their place the words ''section 202 of Pub. L. 105–100, or section 902 of Pub. L. 105–277,''.

§ 240.31 [Amended]

9. Section 240.31 is amended in the first sentence by adding the phrase '', or section 902 of Pub. L. 105–277'' immediately after the phrase ''section 202 of Pub. L. 105–100''.

§ 240.41 [Amended]

10. In § 240.41, paragraph (a) is amended in the first sentence by removing the words ''and section 202 of Pub. L. 105–100'' and adding in their place the words ''section 202 of Pub. L. 105–100, and section 902 of Pub. L. 105–277''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

12. Section 245.15 is added to read as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) *Definitions.* As used in this section, the terms:

Abandoned and *abandonment* mean that prior to a child's 21st birthday both parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

Guardian means a person lawfully invested (by order of a competent Federal, State, or local authority) with the power, and charged with the duty, of taking care of, including managing the property, rights, and affairs of, a child.

Orphan and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents prior to the child's 21st birthday due to any of the following:

(1) The death of both parents;

(2) The death of one parent and the irrevocable and written release of all parental rights by the sole surviving parent based upon the inability of that parent to provide proper care for the child;

(3) The desertion by both parents, as that phrase is defined in § 204.3(b) of this chapter, or by the sole or surviving parent;

(4) The disappearance of both parents, as that phrase is defined in § 204.3(b) of this chapter, or of the sole or surviving parent;

(5 The loss from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent; or

(6) The separation from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent.

Parent, father, or *mother* means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in paragraphs (A) through (E) of section 101(b)(1) of the Act.

(b) *Applicability of provisions of section 902 of HRIFA in general.* Section 902 of Division A of Pub. L. 105–277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), provides special rules for adjustment of status for certain nationals of Haiti, if they meet the other requirements of HRIFA.

(1) *Principal applicants.* Section 902(b)(1) of HRIFA defines five categories of principal applicants who may apply for adjustment of status, if the alien was physically present in the United States on December 31, 1995:

(i) An alien who filed for asylum before December 31, 1995;

(ii) An alien who 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

(iii) An alien who at the time of arrival in the United States and on December 31, 1995, was unmarried and under 21 years of age and who:

(A) Arrived in the United States without parents in the United States and has remained without parents in the United States since his or her arrival;

(B) Became orphaned subsequent to arrival in the United States; or

(C) Was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment.

(2) *Dependents.* Section 902(d) of HRIFA provides for certain Haitian nationals to apply for adjustment of status as the spouse, child, or unmarried son or daughter of a principal HRIFA beneficiary, even if the individual would not otherwise be eligible for adjustment under section 902. The eligibility requirements for dependents are described further in paragraph (d) of this section.

(c) *Eligibility of principal HRIFA applicants.* A Haitian national who is described in paragraph (b)(1) of this section is eligible to apply for adjustment of status under the provisions of section 902 of HRIFA if the alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section, including the evidence described in paragraphs (h), (i), (j) and (k) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section; and

(4) *Continuous physical presence.* The alien has been physically present in the United States for a continuous period beginning on December 31, 1995, and ending on the date the application for adjustment is granted, except for the following periods of time:

(i) Any period or periods of absence from the United States not exceeding 180 days in the aggregate; and

(ii) Any periods of absence for which the applicant received an Advance Authorization for Parole (Form I–512) prior to his or her departure from the United States, provided the applicant returned to the United States in accordance with the conditions of such Advance Authorization for Parole.

(iii) Any periods of absence from the United States occurring after October 21, 1998, and before July 12, 1999, provided the applicant departed the United States prior to December 31, 1998.

(d) *Eligibility of dependents of a principal HRIFA beneficiary.* A Haitian national who is the spouse, child, or unmarried son or daughter of a principal beneficiary eligible for adjustment of status under the provisions of HRIFA is eligible to apply for benefits as a dependent, if the dependent alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status as a dependent in accordance with this section, including the evidence described in paragraphs (h) and (l) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section;

(4) *Existence of relationship at time of adjustment.* The alien's qualifying relationship to the principal beneficiary existed at the time the principal beneficiary was granted adjustment of status and continues to exist at the time the dependent alien is granted adjustment of status; and

(5) *Continuous physical presence.* If the alien is applying as the unmarried son or unmarried daughter of a principal HRIFA beneficiary, he or she

must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending on the date the application for adjustment is granted, as provided in paragraphs (c)(4) and (j) of this section.

(e) *Applicability of grounds of inadmissibility contained in section 212(a).* (1) *Certain grounds of inadmissibility inapplicable to HRIFA applicants.* Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) *Availability of individual waivers.* If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter.

(f) *Time for filing of applications.* (1) *Applications for HRIFA benefits by a principal HRIFA applicant.* The application period begins on June 11, 1999. To benefit from the provisions of section 902 of HRIFA, an alien who is applying for adjustment as a principal applicant must properly file an application for adjustment of status before April 1, 2000.

(2) *Applications by dependent aliens.* The spouse, minor child, or unmarried son or daughter of an alien who is eligible for adjustment of status as a principal beneficiary under HRIFA may file an application for adjustment of status under this section concurrently with or subsequent to the filing of the application of the principal HRIFA beneficiary. An application filed by a dependent may not be approved prior to approval of the principal's application.

(g) *Jurisdiction for filing of applications.* (1) *Filing of applications with the Service.* The Service has jurisdiction over all applications for the benefits of section 902 of HRIFA as a principal applicant or as a dependent under this section, except for applications filed by aliens who are in pending immigration proceedings as provided in paragraph (g)(2) of this section. All applications filed with the Service for the benefits of section 902 of HRIFA must be submitted by mail to: USINS Nebraska Service Center, PO Box 87245, Lincoln, NE 68501–7245. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in § 103.2(e) of this chapter. The Director of the Nebraska Service Center shall have jurisdiction over all applications filed with the Service for adjustment of status under section 902 of HRIFA, unless the Director refers the applicant for a personal interview at a local Service office as provided in paragraph (o)(1) of this section.

(2) *Filing of applications by aliens in pending exclusion, deportation, or removal proceedings.* An alien who is in exclusion, deportation, or removal proceedings pending before the Immigration Court or the Board, or who has a pending motion to reopen or motion to reconsider filed with the Immigration Court or the Board on or before May 12, 1999, must apply for HRIFA benefits to the Immigration Court or the Board, as provided in paragraph (p)(1) of this section, rather than to the Service. However, an alien whose proceeding has been administratively closed (see paragraph (p)(4) of this section) may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section.

(3) *Filing of applications with the Service by aliens who are subject to a final order of exclusion, deportation, or removal.* An alien who is subject to a final order of exclusion, deportation, or removal, and who has not been denied adjustment of status under section 902 of HRIFA by the Immigration Court or the Board, may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section. This includes applications for HRIFA benefits filed by aliens who have filed a motion to reopen or motion to reconsider a final order after May 12, 1999.

(i) *Stay of final order of exclusion, deportation, or removal.* The filing of an application for adjustment under section 902 of HRIFA with the Service shall not stay the execution of such final order unless the applicant has requested and been granted a stay in connection with the HRIFA application. An alien who has filed a HRIFA application with the Service may file an Application for Stay of Removal (Form I–246) in accordance with section 241(c)(2) of the Act and § 241.6 of this chapter.

(ii) *Grant of stay.* Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 902 of HRIFA or significant negative discretionary factors, a Form I–246 filed by a bona fide applicant for adjustment under section 902 of HRIFA shall be approved and the removal of the applicant shall be stayed until such time as the Service has adjudicated the application for adjustment in accordance with this section.

(h) *Application and supporting documents.* Each applicant for adjustment of status must file an Application to Register Permanent Residence or Adjust Status (Form I–485). An applicant should complete Part 2 of Form I–485 by checking box ''h—other'' and writing ''HRIFA—Principal'' or ''HRIFA—Dependent'' next to that block. Each application must be accompanied by:

(1) *Application fee.* The fee for Form I–485 prescribed in § 103.7(b)(1) of this chapter;

(2) *Fingerprinting fee.* If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) *Identifying information.*

(i) A copy of the applicant's birth certificate or other record of birth as provided in paragraph (m) of this section;

(ii) A completed Biographic Information Sheet (Form G–325A), if the applicant is between 14 and 79 years of age;

(iii) A report of medical examination, as specified in § 245.5 of this chapter; and

(iv) Two photographs, as described in the instructions to Form I–485;

(4) *Arrival-Departure Record.* A copy of the Form I–94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled;

(5) *Police clearances.* If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance;

(6) *Proof of Haitian nationality.* If the applicant acquired Haitian nationality other than through birth in Haiti, a copy of the certificate of naturalization or

certificate of citizenship issued by the Haitian government; and

(7) *Additional supporting evidence.* Additional supporting evidence pertaining to the applicant as provided in paragraphs (i) through (l) of this section.

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of one of the following kinds of documentation:

(1) *Form I–94.* A photocopy of the Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) *Form I–122.* A photocopy of the Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to December 31, 1995, placing the applicant in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(3) *Form I–221.* A photocopy of the Form I–221, Order to Show Cause, issued by the Service on or prior to December 31, 1995, placing the applicant in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(4) *Other Service document.* A photocopy of any application or petition for a benefit under the Immigration and Nationality Act filed by or on behalf of the applicant on or prior to December 31, 1995, which establishes his or her presence in the United States, or a fee receipt issue by the Service for such application or petition;

(5) *Other government documentation.* Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 31, 1995. For this purpose, the term *Federal, State,* or *local authority* includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(i) A State driver's license;

(ii) A State identification card issued in lieu of a driver's license to a non-driver;

(iii) A county or municipal hospital record;

(iv) A public college or public school transcript;

(v) Income tax records;

(vi) A copy of a petition on behalf of the applicant which was submitted to the Service on or before December 31, 1995, and which lists the applicant as being physically present in the United States;

(vii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record; and

(viii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(6) *Private or religious school transcripts.* In the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a private or religious school which:

(i) Is registered with, or approved or licensed by, appropriate State or local authorities;

(ii) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(iii) Maintains enrollment records in accordance with State or local requirements or standards.

(j) *Evidence of continuity of presence in the United States since December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant, or as the unmarried son or daughter of a principal applicant, must provide with the application evidence establishing continuity of the alien's physical presence in the United States since December 31, 1995. (This requirement does not apply to a dependent seeking HRIFA benefits as the spouse or minor child of a principal applicant.)

(1) *Evidence establishing presence.* Evidence establishing the continuity of the alien's physical presence in the United States since December 31, 1995, may consist of any documentation issued by any governmental or non-governmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument. In general, there should be no chronological gaps in such documentation exceeding 90 days in length, excluding periods when the applicant states that he or she was not physically present in the United States. Such documentation need not bear the seal of the issuing authority.

(2) *Examples.* Documentation establishing continuity of physical presence may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the Federal or State government, such as public utilities, accredited private and religious schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of another member of that same family unit; and

(x) For applicants who have had ongoing correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records.

(3) *Evidence relating to absences from the United States since December 31, 1995.* If the alien is applying as a principal applicant, or as the unmarried son or daughter of a principal applicant, and has departed from and returned to the United States since December 31, 1995, the alien must provide with the application an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before December 31, 1995;

(ii) The date of each departure (if any) from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

(k) *Evidence establishing the alien's eligibility under section 902(b) of*

HRIFA. An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing that the alien satisfies one of the eligibility standards described in paragraph (b)(1) of this section.

(1) *Applicant for asylum.* If the alien is a principal applicant who filed for asylum before December 31, 1995, the applicant must provide with the application either:

(i) A photocopy of the first page of the Application for Asylum and Withholding of Removal (Form I–589); or

(ii) If the alien is not in possession of a photocopy of the first page of the Form I–589, a statement to that effect giving the date of filing and the location of the Service office or Immigration Court at which it was filed;

(2) *Parolee.* If the alien is a principal applicant who 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, the applicant must provide with the application either:

(i) A photocopy of the Arrival-Departure Record (Form I–94) issued when he or she was granted parole; or

(ii) If the alien is not in possession of the original Form I–94, a statement to that effect giving the date of parole and the location of the Service port-of-entry at which parole was authorized.

(3) *Child without parents.* If the alien is a principal applicant who arrived in the United States as a child without parents in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence establishing the absence of the child's parents, which may include either:

(A) Evidence showing the deaths of, or disappearance or desertion by, the applicant's parents; or

(B) Evidence showing that the applicant's parents did not arrive in the United States with or before the applicant and that neither of the applicant's parents subsequently arrived in the United States. Such evidence may include, but is not limited to, documentation showing that the applicant's parents have been continuously employed outside the United States, are deceased, disappeared or abandoned the applicant prior to the applicant's arrival, or were otherwise engaged in activities showing that they were not in the United States.

(4) *Orphaned child.* If the alien is a principal applicant who is or was a child who became orphaned subsequent to arrival in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Either:

(A) The death certificates of both parents (or in the case of a child having only one parent, the death certificate of the sole parent) showing that the death or deaths occurred after the date of the applicant's arrival in the United States, or

(B) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent).

(5) *Abandoned child.* If the alien is a principal applicant who was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment.

(l) *Evidence relating to applications by dependents under section 902(d) of HRIFA.* (1) *Evidence of spousal relationship.* If the alien is applying as the spouse of a principal HRIFA beneficiary, the applicant must provide with the application a copy of their certificate of marriage and copies of documents showing the legal termination of all other marriages by the applicant or the other beneficiary.

(2) *Evidence of parent-child relationship.* If the applicant is applying as the child, unmarried son, or unmarried daughter of a principal HRIFA beneficiary, and the principal beneficiary is not the applicant's biological mother, the applicant must provide with the application evidence to demonstrate the parent-child relationship between the principal beneficiary and the applicant. Such evidence may include copies of the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence.

(m) *Secondary evidence.* If the primary evidence required in paragraph (h)(3)(i), (l)(1) or (l)(2) of this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant event. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) and (j) of this section. However, subject to verification by the Service, if the documentation specified in paragraphs (i) and (j) is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

(n) *Authorization to be employed in the United States while the application is pending.* (1) *Application for employment authorization.* An applicant for adjustment of status under section 902 of HRIFA who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file an Application for Employment Authorization (Form I–765) with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I–765 either concurrently with or subsequent to the filing of the application for HRIFA benefits on Form I–485.

(2) *Adjudication and issuance.* Employment authorization may not be issued to an applicant for adjustment of status under section 902 of HRIFA until the adjustment application has been pending for 180 days, unless the Director of the Nebraska Service Center verifies that Service records contain evidence that the applicant meets the criteria set forth in section 902(b) or 902(d) of HRIFA, and determines that there is no indication that the applicant is clearly ineligible for adjustment of status under section 902 of HRIFA, in which case the Director may approve the application for employment authorization, and issue the resulting document, immediately upon such verification. If the Service fails to

adjudicate the application for employment authorization upon expiration of the 180-day waiting period, or within 90 days of the filing of application for employment authorization, whichever comes later, the alien shall be eligible for interim employment authorization in accordance with § 274a.13(d) of this chapter. Nothing in this section shall preclude an applicant for adjustment of status under HRIFA from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(o) *Adjudication of HRIFA applications filed with the Service.* (1) *Referral for interview.* Except as provided in paragraphs (o)(2) and (o)(3) of this section, all aliens filing applications for adjustment of status with the Service under this section must be personally interviewed by an immigration officer at a local office of the Service. If the Director of the Nebraska Service Center determines that an interview of the applicant is necessary, the Director shall forward the case to the appropriate local Service office for interview and adjudication.

(2) *Approval without interview.* Upon examination of the application, including all other evidence submitted in support of the application, all relevant Service records and all other relevant law enforcement indices, the Director may approve the application without an interview if the Director determines that:

(i) The alien's claim to eligibility for adjustment of status under section 902 of HRIFA is verified through existing Service records; and

(ii) The alien is clearly eligible for adjustment of status.

(3) *Denial without interview.* If, upon examination of the application, all supporting documentation, all relevant Service records, and all other relevant law enforcement indices, the Director determines that the alien is clearly ineligible for adjustment of status under HRIFA and that an interview of the applicant is not necessary, the Director may deny the application.

(p) *Adjudication of HRIFA applications filed in pending exclusion, deportation, or removal proceedings.* (1) *Proceedings pending before an Immigration Court.* Except as provided in paragraph (p)(4) of this section, the Immigration Court shall have sole jurisdiction over an application for adjustment of status under this section filed by an alien who is in exclusion, deportation, or removal proceedings pending before an immigration judge or the Board, or who has a pending motion to reopen or motion to reconsider filed with an immigration judge or the Board on or before May 12, 1999. The immigration judge having jurisdiction over the exclusion, deportation, or removal proceedings shall have jurisdiction to accept and adjudicate any application for adjustment of status under section 902 of HRIFA during the course of such proceedings. All applications for adjustment of status under section 902 of HRIFA filed with an Immigration Court shall be subject to the requirements of §§ 3.11 and 3.31 of this chapter.

(2) *Motion to reopen or motion to reconsider.* If an alien who has a pending motion to reopen or motion to reconsider timely filed with an immigration judge on or before May 12, 1999, files an application for adjustment of status under section 902 of HRIFA, the immigration judge shall reopen the alien's proceedings for consideration of the adjustment application, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA.

(3) *Proceedings pending before the Board.* Except as provided in paragraph (d)(4) of this section, in the case of an alien who either has a pending appeal with the Board or has a pending motion to reopen or motion to reconsider timely filed with the Board on or before May 12, 1999, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 902 of HRIFA, the immigration judge shall certify the decision to the Board for consideration in conjunction with the applicant's previously pending appeal or motion.

(4) *Administrative closure of exclusion, deportation, or removal proceedings.* (i) An alien who is in exclusion, deportation, or removal proceedings, or who has a pending motion to reopen or a motion to reconsider such proceedings filed on or before May 12, 1999, may request that the proceedings be administratively closed, or that the motion be indefinitely continued, in order to allow the alien to file such application with the Service as prescribed in paragraph (g) of this section. If the alien appears to be eligible to file an application for adjustment of status under this section, the Immigration Court or the Board (whichever has jurisdiction) shall, with the concurrence of the Service, administratively close the proceedings or continue indefinitely the motion.

(ii) In the case of an otherwise-eligible alien whose exclusion, deportation, or removal proceedings have been administratively closed for reasons not specified in this section, the alien may only apply before the Service for adjustment of status under this section.

(q) *Approval of HRIFA applications.* (1) *Applications approved by the Service.* If the Service approves the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the applicant accordingly. The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. If the alien had previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the director.

(2) *Applications approved by an immigration judge or the Board.* If an immigration judge or (upon appeal) the Board grants an application for adjustment under the provisions of section 902 of HRIFA, the date of the alien's lawful admission for permanent residence shall be the date of such grant.

(r) *Review of decisions by the Service denying HRIFA applications.* (1) *Denial notification.* If the Service denies the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall notify the applicant of the decision and of any right to renew the application in proceedings before the Immigration Court.

(2) *Renewal of application for HRIFA benefits in removal, deportation, or exclusion proceedings.* An alien who is not the subject of a final order of removal, deportation, or exclusion may renew his or her application for adjustment under section 902 of HRIFA during the course of such removal, deportation, or exclusion proceedings.

(i) *Initiation of removal proceedings.* In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or

removal proceedings, the director shall initiate removal proceedings in accordance with § 239.1 of this chapter.

(ii) *Recalendaring or reinstatement of prior proceedings.* In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (p)(4) of this section, the director shall make a request for recalendaring or reinstatement to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when the application has been denied. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding.

(iii) *Filing of renewed application.* A principal alien may file a renewed application for HRIFA benefits with the Immigration Court either before or after March 31, 2000, if he or she had filed his or her initial application for such benefits with the Service on or before March 31, 2000. A dependent of a principal applicant may file such renewed application with the Immigration Court either before or after March 31, 2000, regardless of when he or she filed his or her initial application for HRIFA benefits with the Service.

(3) *Aliens with final orders.* In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, the Service shall refer the decision to deny the application by filing a Notice of Certification (Form I–290C) with the Immigration Court that issued the final order for consideration in accordance with paragraph (s) of this section.

(s) *Action on decisions referred to the Immigration Court by a Notice of Certification (Form I–290C).* (1) *General.* Upon the referral by a Notice of Certification (Form I–290C) of a decision to deny the application, in accordance with paragraph (r)(3) of this section, the immigration judge shall conduct a hearing, under the authority contained in § 3.10 of this chapter, to determine whether the alien is eligible for adjustment of status under section 902 of HRIFA. Such hearing shall be conducted under the same rules of procedure as proceedings conducted under part 240 of this chapter, except the scope of review shall be limited to a determination of the alien's eligibility for adjustment of status under section 902 of HRIFA. During such proceedings, all parties are prohibited from raising or considering any unrelated issues, including, but not limited to, issues of admissibility, deportability, removability, and eligibility for any remedy other than adjustment of status under section 902 of HRIFA. Should the alien fail to appear for such hearing, the immigration judge shall deny the application for adjustment under section 902 of HRIFA.

(2) *Stay pending review.* When the Service refers a decision to the Immigration Court on a Notice of Certification (Form I–290C) in accordance with paragraph (r)(3) of this section, the referral shall not stay the execution of the final order. Execution of such final order shall proceed unless a stay of execution is specifically granted by the immigration judge, the Board, or an authorized Service officer.

(3) *Appeal of Immigration Court decision.* Once the immigration judge issues his or her decision on the application, either the alien or the Service may appeal the decision to the Board. Such appeal must be filed pursuant to the requirements for appeals to the Board from an Immigration Court decision set forth in §§ 3.3 and 3.8 of this chapter.

(4) *Rescission or reopening of the decision of an Immigration Court.* The decision of an Immigration Court under paragraph (s)(1) of this section denying an application for adjustment under section 902 of HRIFA for failure to appear may be rescinded or reopened only:

(i) Upon a motion to reopen filed within 180 days after the date of the denial if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act; or

(ii) Upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in person (or, if personal service was not practicable, through service by mail to the alien or to the alien's counsel of record, if any) or the alien demonstrates that he or she was in Federal or State custody and the failure to appear was through no fault of the alien.

(t) *Parole authorization for purposes of travel.* (1) *Travel from and return to the United States while the application for adjustment of status is pending.* If an applicant for benefits under section 902 of HRIFA desires to travel outside, and return to, the United States while the application for adjustment of status is pending, he or she must file a request for advance parole authorization on an Application for Travel Document (Form I–131), with fee as set forth in § 103.7(b)(1) of this chapter and in accordance with the instructions on the form. If the alien is either in deportation or removal proceedings, or subject to a final order of deportation or removal, the Form I–131 must be submitted to the Director, Office of International Affairs; otherwise the Form I–131 must be submitted to the Director of the Nebraska Service Center, who shall have jurisdiction over such applications. Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 902 of HRIFA is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 902 of HRIFA.*

(i) An otherwise eligible applicant who is outside the United States and wishes to come to the United States in order to apply for benefits under section 902 of HRIFA may request parole authorization for such purpose by filing an Application for Travel Document (Form I–131) with the Nebraska Service Center, at P.O. Box 87245, Lincoln, NE 68501–7245. Such application must be supported by a photocopy of the Form I–485 that the alien will file once he or she has been paroled into the United States. The applicant must include photocopies of all the supporting documentation listed in paragraph (f) of this section, except the filing fee, the medical report, the fingerprint card, and the local police clearances.

(ii) If the Director of the Nebraska Service Center is satisfied that the alien will be eligible for adjustment of status once the alien has been paroled into the United States and files the application, he or she may issue an Authorization for Parole of an Alien into the United States (Form I–512) to allow the alien to travel to, and be paroled into, the United States for a period of 60 days.

(iii) The applicant shall have 60 days from the date of parole to file the application for adjustment of status. If the alien files the application for adjustment of status within that 60-day period, the Service may re-parole the alien for such time as is necessary for adjudication of the application. Failure to file such application for adjustment of status within 60 days shall result in the alien being returned to the custody of the Service and being examined as an arriving alien applying for admission. Such examination will be conducted in accordance with the provisions of section 235(b)(1) of the Act if the alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, or section 240 of the Act if the alien is inadmissible under any other grounds.

(iv) Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act. The authority of the Director of the Nebraska Service Center to authorize parole from outside the United States under this provision shall expire on March 31, 2000.

(3) *Effect of departure on an outstanding warrant of exclusion, deportation, or removal.* If an alien who is the subject of an outstanding final order of exclusion, deportation, or removal departs from the United States, with or without an advance parole authorization, such final order shall be executed by the alien's departure. The execution of such final order shall not preclude the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212) in accordance with § 212.2 of this chapter.

(u) *Tolling the physical presence in the United States provision for certain individuals.* (1) Departure with advance authorization for parole. In the case of an alien who departed the United States after having been issued an Authorization for Parole of an Alien into the United States (Form I–512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 902(b)(1) of HRIFA is tolled while the alien is outside the United States pursuant to the issuance of the Form I–512.

(2) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (l)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence requirement contained in section 902(b)(1) of HRIFA is tolled from the date the application is received at the Nebraska Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I–512.

(3) *Departure without advance authorization for parole.* In the case of an otherwise-eligible applicant who departed the United States on or before December 31, 1998, the physical presence in the United States provision of section 902(b)(1) of HRIFA is tolled as of October 21, 1998, and until July 12, 1999.

(v) *Judicial review of HRIFA adjustment of status determinations.* Pursuant to the provisions of section 902(f) of HRIFA, there shall be no judicial appeal or review of any administrative determination as to whether the status of an alien should be adjusted under the provisions of section 902 of HRIFA.

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

13. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.12 [Amended]

14. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words ''§ 245.13(j) of this chapter'' and adding in their place the words ''§§ 245.13(j) and 245.15(k) of this chapter''.

§ 274a.13 [Amended]

15. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words ''in so far as it is governed by § 245.13(j) of this chapter'' and adding in their place the words ''insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter''.

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by:

a. Revising the entry for Form ''I–290C'', and by

b. Adding the entry for Form ''I–485 Supplement C'' in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * * *	*	*
I–290C	02–01–99	Notice of Certification.
* * * * *	*	*
I–485 Supplement C	04–01–99	HRIFA Supplement to Supplement C Form I–485 Instructions.
* * * * *	*	*

18. Section 299.5 is amended in the table by adding the entry for Form ''I–485 Supplement C'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * * * *

INS form No.	INS form title	Currently assigned OBM Control No.
*	*	*
I–485 Supplement C	HRIFA Supplement to Form I–485 Instructions	1115–0229
*	*	*

Dated: May 6, 1999.

Janet Reno,

Attorney General.

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