

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service**

[INS No. 2052-00]

**Delegation of Authority To Accept and Adjudicate Certain Requests for Advance Parole in Connection With the HRIFA Adjustment Program****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Notice.

**SUMMARY:** This notice advises the public that effective April 1, 2000, the Immigration and Naturalization Service (Service) is delegating to the Director of the Nebraska Service Center the authority to accept and adjudicate requests for advance parole authorization filed by qualifying Haitian dependents of persons who have applied for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The Director of the Nebraska Service Center had previously been authorized to adjudicate such requests until March 31, 2000, through an interim rule published in the **Federal Register** on May 12, 1999, at 64 FR 25756. The delegation of authority provided in this public notice will allow the Director of the Nebraska Service Center to continue to provide this service to the public without interruption.

**DATES:** This notice is effective April 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Alice Khachikian, Immigration Officer, Parole Branch, Office of International Affairs, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536, telephone (202) 307-6084.

**SUPPLEMENTARY INFORMATION:****What Is the Haitian Refugee Immigration Fairness Act (HRIFA)?**

On October 21, 1998, the President signed into law a Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105-277 (112 Stat. 2681). Division A, title IX of that statute, the HRIFA, contained a provision, section 902, that allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. On May 12, 1999, the Department of Justice (Department) published an interim rule in the **Federal Register** at 64 FR 25756, with respects for comments, that implemented section 902 of the HRIFA.

Section 902 of the 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 the 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 including any absence or absences amounting to 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 (Act), 8 U.S.C. 1182(a), except those provisions specifically excepted by the HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of the HRIFA.

The five classes described in section 902(b)(1) of the HRIFA 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 such 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.

In addition, under section 902(d) of the HRIFA, the Haitian national spouse, child (i.e., under 21 years old), or unmarried son or daughter (i.e., 21 years old or older) of such principal adjustment applicant may apply for and be granted adjustment of status to that of lawful permanent resident. Although an unmarried son or daughter is required to have been physically present in the United States since December 31, 1995, neither the spouse or child need meet any physical presence requirements other than to be in the United States in order to apply for adjustment of status. Furthermore, unlike principal applicants, dependents have no deadline by which they must

file their applications for adjustment of status under the HRIFA.

**Under What Authority May an Alien Submit and the Service Consider a Request for Advance Parole for the Purpose of Coming to the United States in Order To Seek Adjustment of Status Under the HRIFA?**

Service regulations at 8 CFR 245.15(t)(2) allow an otherwise eligible applicant who is outside the United States to request parole authorization to come to the United States to apply for benefits under section 902 of the HRIFA.

**What Is the Process for Seeking an Advance Parole Authorization?**

An eligible individual should file Form I-131, Application for Travel Document, with the USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501-7245. The application must be accompanied by the filing fee for Form I-131 specified in 8 CFR 103.7(b)(1) (currently \$95) and a photocopy of the complete Form I-485, Application to Register Permanent Residence or Adjust Status, which the requestor will file once he or she arrives in the United States. The applicant must include photocopies of all the supporting documentation listed on Forms I-485 and I-485 Supplement C, HRIFA Supplement to Form I-485 Instructions. However, the applicant should not submit the filing fee for the Form I-485, the medical report, the fingerprint card, or the local police clearances.

Although advance parole requests by persons outside the United States are normally filed with, and adjudicated by, the district director having jurisdiction over the overseas area (i.e., the district director in Mexico City, Mexico; Rome, Italy; or Bangkok, Thailand), the May 12, 1999, interim rule which implemented the HRIFA provided, at 8 CFR 245.15(t), that in most cases those advance parole requests submitted in connection with the HRIFA program would be filed with and adjudicated by, the Director of the Nebraska Service Center (NSC). The interim rule authorized the Director of the NSC to accept and adjudicate such requests through March 31, 2000, the deadline for the filing of HRIFA applications by principal applicants.

This delegation of authority was given to the Director of the NSC for two reasons. First, with the exception of applications filed by persons who are currently in proceedings before the Immigration Court, all applications for adjustment of status under the HRIFA must be filed with the NSC.

Accordingly, any files relating to the case (e.g., the file of the principal applicant upon which the dependent's case depends) are likely to be at the NSC. Second, due to the NSC's larger staff and greater automation, it is in a better position to handle the volume of requests for parole under this program.

#### **How Is the Advance Parole Process Being Changed?**

There is no change in the process for requesting or being granted advance parole authorization in connection with the HRIFA applications. The only change is that the authorization for accepting and adjudicating parole requests is being delegated to the Director of the NSC from April 1, 2000, until further notice.

#### **Under What Authority Is the Service Taking This Action?**

Section 212(d)(5) of the Act authorizes the Attorney General to parole into the United States any alien applying for admission to the United States "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." In accordance with section 103 of the Act, the Attorney General has delegated authority for administration and enforcement of the Act, including section 212(d)(5) of the Act, to the Commissioner of the Immigration and Naturalization Service. See 28 CFR 0.105, 8 CFR 2.1. The Commissioner may in turn redelegate her authority to any other officer or employee of the Service. See 28 CFR 0.108, 8 CFR 2.1, 8 CFR 103.1.

#### **What Individuals Are Included in This Advance Parole Program?**

In order to participate in this advance parole program, an individual must be a national of Haiti who is the dependent spouse or child of a Haitian who is a principal applicant for adjustment of status under the HRIFA. In addition, a Haitian national who is the dependent unmarried son or daughter of a Haitian who is a principal applicant for adjustment of status under the HRIFA may also participate in this advance parole program, but only if he or she was physically present in the United States on or before December 31, 1995, and has not been outside the United States for more than 180 days in the aggregate since that date.

#### **What Other Factors Will Determine Whether the Request for Advance Parole Will Be Granted?**

In accordance with the provisions of section 212(d)(5) of the Act previously cited, the Service will review other

factors on a case-by-case basis. These other factors include, but are not limited to, a determination as to whether the requestor's application for adjustment of status is likely to be approved, whether the requestor has a criminal record or immigration record which warrants denial of the parole request, and whether there are other negative discretionary factors which argue against approval of the parole request.

Furthermore, with regard to a dependent child who is approaching his or her 21st birthday and cannot demonstrate that he or she has been continuously physically present in the United States since December 31, 1995, not counting absences totaling 180 days or less, the Service will deny the parole request if it is not feasible to process the request and issue the travel document in sufficient time for the requestor to travel to the United States, file a HRIFA adjustment application and have that application completely adjudicated before the requestor's 21st birthday.

#### **Why Is the Delegation of Authority Being Applied to Applicants Under the HRIFA Program and Not to Applicants Under Section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA)?**

Unlike the HRIFA, section 202 of NACARA requires all applicants, including dependents, to have filed their applications for adjustment of status by March 31, 2000. It is, therefore, not possible for anyone to be paroled into the United States on or after April 1, 2000, for the purpose of applying for adjustment of status under section 202 of NACARA.

#### **How Will the Service Detect and Deter Potential Fraudulent Requests for Parole Authorization Under This Program?**

Before approving the request for advance parole, the Director of the NSC will review all Service records, and other records as appropriate, pertaining to both the requestor and the principal applicant for adjustment of status through whom the requestor's parole request is based. The Director of the NSC will approve the parole request only after the Service has approved the principal applicant's adjustment application and the Director of the NSC is satisfied that the requestor meets all criteria for parole previously discussed.

Once the parole request has been approved, the documentation will be forwarded to the Service Officer-in-Charge in Port-au-Prince, Haiti (or, if the alien resides in another country, to the appropriate U.S. consulate) for interview of the alien. If the Officer-in-

Charge (or, where appropriate, the consular officer) is not fully satisfied that the requestor meets all requirements for parole in order to apply for adjustment of status under the HRIFA, that officer will not issue the parole authorization to the alien, but will instead cancel and return it to the Director of the NSC. If that officer is fully satisfied regarding these issues, he or she will issue the advance parole document allowing the alien to travel to the United States and be paroled into the country for 60 days. The alien must apply for adjustment of status within this 60-day period. Once the application for adjustment of status has been filed, the alien will be allowed to remain until the application for adjustment of status has been adjudicated.

#### **What Will Happen to Individuals Who Fail To Apply for Adjustment of Status During the 60-Day Parole Period?**

If the individual paroled into the United States fails to apply for adjustment of status within the 60-day parole period, he or she will be subject to expedited removal from the United States under section 235(b)(1)(A)(i) of the Act.

#### **When Will This Delegation of Authority Begin and How Long Will It Be in Effect?**

This delegation of authority begins April 1, 2000, and will remain in effect indefinitely. If the Service should decide to terminate this delegation, a notice to that effect will be published in the **Federal Register**.

Dated: March 20, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

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## **DEPARTMENT OF JUSTICE**

### **Parole Commission**

#### **Sunshine Act Meeting**

**AGENCY HOLDING MEETING:** Department of Justice, United States Parole Commission.

**DATE AND TIME:** 9:30 a.m., Tuesday, March 28, 2000.

**PLACE:** U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

**STATUS:** Closed—Meeting.

**MATTERS CONSIDERED:** The following matter will be considered during the closed portion of the Commission's Business Meeting: