demand for Native spearmint oil during the remainder of the marketing year will be satisfied.

As of February 23, 2000, approximately 40,966 pounds of Native spearmint oil was available for market. During the past 5 years, the average sales of Native spearmint oil from March 1 to May 31 totaled 75,586 pounds, while the average sales for the period June 1 through February 29 totaled 1,087,385 pounds. The Far West spearmint oil industry has sold approximately 1,282,150 pounds of Native spearmint oil through February 23, 2000. This action has the effect of adding 73,545 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the remainder of this marketing year up to approximately 114,511 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, the prior interim final rule increasing the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage, the Committee's recommendation and other available information, it is found that to revise § 985.218 to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year. A 30-day comment period is provided. Thirty days is deemed appropriate because this rule increases the quantity of Native spearmint oil that may be marketed during the marketing year ending on May 31, 2000. Additionally, the current quantity of Native spearmint oil available for market may not be adequate to satisfy market needs for the remainder of the marketing year. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2000; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the season, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 985.218 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

### § 985.218 Salable quantities and allotment percentages—1999—2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,309,915 pounds and an allotment percentage of 64 percent.

Dated: March 21, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–7333 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

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

**[INS No. 1963–98; AG Order No. 2294–2000]**

**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:** Final rule.

**SUMMARY:** This 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:** This final rule is effective March 24, 2000.

**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:* Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:**

**What are the Basic Provisions of Section 902 of HRIFA and the Interim Regulations Published on May 12, 1999?**

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 Haitian Refugee Immigration Fairness Act of 1998 (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, with requests for comments, that implemented section 902 of HRIFA. *See* 64 FR 25756.

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 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 (the Act), 8 U.S.C. 1182(a), except 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) of 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.

**How Many Comments Were Received from Interested Parties in Response to the Interim Rule?**

A total of 46 comments were received during the comment period. Commenters included Members of Congress, the mayor of a major city, representatives of a number of nongovernmental organizations, private attorneys, and other interested individuals. The Department appreciates the contributions of all individuals and groups who submitted comments.

**What Comments Were Submitted and how is the Regulation Being Changed as a Result?**

The issues raised by the commenters generally fell into 17 areas:

1. Issues Pertaining to Eligibility Under the Statute, but not Related to Immigrant Visa Waivers

A number of commenters requested that the Department extend the time period for submission of applications by principal applicants beyond the March 31, 2000, deadline set by statute. Such action would require new legislation, as it is clearly beyond the rulemaking authority of the Department.

Other commenters, recognizing that such change would exceed the Department's authority, requested that the Department not reject any applications as improperly filed during the final 30 days of the filing period because of a lack of documentation to establish eligibility. In light of the relatively short filing period, the Department finds this suggestion to be both reasonable and within its rulemaking authority. Accordingly, 8 CFR 245.15(c)(2) has been revised to provide that an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted to either the Nebraska Service Center or the Immigration Court by a principal applicant seeking adjustment of status under HRIFA will not be rejected as improperly filed as long as it has been properly completed and signed by the applicant, identifies the applicant as a HRIFA principal applicant, and is accompanied by either the correct fee or a request for a fee waiver.

Some commenters felt that any Haitian who entered the United States prior to December 31, 1995, or who has been living in the United States since December 31, 1995, and any family members of such an individual, should be allowed to adjust his or her status to that of permanent resident. Although the Department understands the desire of the commenters to have the benefits of permanent residence extended to as many persons as possible, the suggestion is contrary to the statute, which requires that principal applicants fall within one of the five categories set forth above, be admissible to the United States, and meet all other statutory requirements. Accordingly, this suggestion cannot be adopted.

Some commenters wanted the regulations to provide that upon being granted lawful permanent residence, any HRIFA applicants who arrived in the United States after being paroled from the U.S. Naval Base at Guantanamo Bay, Cuba (Guantanamo Bay), would immediately become eligible to apply for United States citizenship. This suggestion cannot be adopted because the Act specifically requires an alien to reside in the United States for a specific period ''after being lawfully admitted for permanent residence.'' See Sec. 316(a)(1) of the Act, 8 U.S.C. 1427(a)(1). In the rare instances in which the Immigration and Naturalization Service (Service or INS) has recorded the date of admission for permanent residence as other than the actual date the application for such status was granted, it has only done so in accordance with explicit statutory authority.

Some commenters suggested that the regulations provide that any Haitian national who entered the United States prior to December 31, 1995, and who applied for asylum prior to December 31, 1997, should be eligible for adjustment under HRIFA. This suggestion is contrary to statute and beyond the rulemaking authority of the Department; it therefore cannot be adopted.

Finally, some commenters suggested that any asylum application that was mailed to the Service by December 31, 1995, but rejected as not properly filed, be considered to have been timely filed for HRIFA purposes. Congress could have opened the category to those who ''filed or attempted to file'' the application, or more simply to those who ''submitted'' the application. Instead, Congress required that the applicant have ''filed for asylum before December 31, 1995,'' in order to fall

within this category. Accordingly, the Department will consider only those asylum applications that were properly filed by the deadline established by statute. The Service's long-standing regulation, 8 CFR 103.2(a)(7), which concerns the proper filing of petitions, will not be revised. The suggestion will not be adopted.

2. Issues Pertaining to Eligibility Under the Statute and Related to Immigrant Visa Waivers

A number of commenters suggested that the Department either automatically waive those grounds of inadmissibility relating to medical conditions (especially HIV/AIDS infection) and fraud violations, or provide a more generous waiver provision such as that accorded to refugees and asylees adjusting status to lawful permanent residence under section 209 of the Act. 8 U.S.C. 158.

Section 902(a)(1)(B) of HRIFA states that, in order for the Attorney General to grant permanent residence under HRIFA, the applicant must be admissible to the United States. The specific grounds under which an alien may be found inadmissible to the United States are set forth in section 212(a) of the Act. 8 U.S.C. 1182(a). While HRIFA provides that five of these specific grounds of inadmissibility shall not apply to HRIFA applicants, it does not exempt them from the grounds pertaining to either inadmissibility under medical grounds, which is discussed in section 212(a)(1)(A), 8 U.S.C. 1182(a)(1)(A), or inadmissibility under grounds pertaining to misrepresentation, which is discussed in section 212(a)(6)(C), 8 U.S.C. 1182(a)(1)(C). Without statutory authority to waive grounds of inadmissibility, the Attorney General may not grant permanent residence to an inadmissible alien.

The statutory authority to grant waivers of medical grounds of inadmissibility is contained in section 212(g) of the Act, 8 U.S.C. 1182(g), and the authority to grant waivers of grounds of inadmissibility pertaining to misrepresentation is contained in section 212(i) of the Act. 8 U.S.C. 1182(i). Both of these sections set forth waiver eligibility criteria mandating that, among other things, the applicant have a qualifying relative who is a citizen or lawful permanent resident of the United States. Unfortunately, many HRIFA applicants who are inadmissible under section 212(a)(1) or section 212(a)(6)(C) of the Act do not have such qualifying relatives, and are therefore ineligible for these waivers.

Some commenters suggest that the authority contained in section 209 of the Act, 8 U.S.C. 1159, enables the Department to grant waivers of inadmissibility to HRIFA applicants. In so doing, a number of them quote a portion of paragraph (c) of that section. The entire paragraph provides:

> (c) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status *under this section* [i.e., section 209 of the Act], and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) *with respect to such an alien* for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. 1159(c) (emphasis added).

When read in its entirety, it is clear that the waiver provision contained in section 209(c) of the Act applies only to aliens who are adjusting status under that section, not to aliens applying for adjustment of status under other provision of law, including HRIFA. The Department does not have the statutory authority to make this change. Accordingly, this suggestion cannot be adopted.

3. Other Waiver Issues

An applicant who is able to meet the statutory requirements set forth in sections 212(g) and 212(i) of the Act for grounds of inadmissibility pertaining to a medical condition or to fraud or willful misrepresentation must also show that his or her case warrants approval as a matter of discretion. In exercising such discretionary authority, adjudicating officers and immigration judges must take into account all factors—whether positive and negative—bearing on the case, and determine which factors carry significant weight and which do not.

A number of commenters have requested that in adjudicating the waiver application, the adjudicating officer or immigration judge take into account certain factors pertaining to the manner of the applicant's arrival in the United States or to conditions in the applicant's homeland. Specifically, commenters requested that for persons who were paroled into the United States from Guantanamo Bay for the purpose of receiving treatment of an HIV or AIDS condition, the fact that their arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor. Likewise, with regard to those applicants who used counterfeit documents to travel from Haiti to the United States, many commenters asked that the Department take into consideration the general lawlessness and corruption that was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors peculiar to Haiti during that period that may have induced the alien to commit fraud or make willful misrepresentations. Although these factors would probably have been taken into account by the adjudicating officer or immigration judge regardless of the inclusion or exclusion of any specific language in the regulations, the Department feels that the inclusion of such language in the final rule will facilitate a general understanding of the importance of these factors in making the discretionary decision, and the suggestion has been adopted.

4. The Fee for Filing an Application

Some commenters requested that the Department provide a reduced fee level for families filing two or more applications for adjustment of status under the HRIFA program.

The fees charged under the HRIFA program are the same as those charged all other adjustment applicants and (on an individual case basis) the regulations already allow persons who are unable to pay the specified fees to request a waiver of the filing fee. Upon consideration of all factors, it was determined that it was not appropriate to provide a reduced fee level for HRIFA applicants in general.

5. Documentation in General

A number of commenters made suggestions regarding the documentation required for proof of eligibility and the manner and timeframe in which that documentation is to be submitted. Some commenters suggested that the regulations should not require submission of proof of unavailability of primary evidence (*e.g.,* a birth certificate) before accepting secondary evidence (*e.g.,* a baptismal record or a consistent prior claim). Conversely, other commenters suggested that the standard should call for the submission of the ''best evidence available.'' In considering applications and petitions for benefits under the Act, the Department's policy has generally been that the applicant should submit, and the adjudication should be based on, the best evidence available. In determining whether a particular type of evidence is generally available from foreign countries, the Department is guided by the information contained in Volume 9, Part IV, Appendix C of the Department of State's Foreign Affairs

Manual (FAM), which reports that birth certificates, marriage records, divorce records, death certificates, and adoption certificates are all generally available from Haiti. This is not to say, as it could be said about any country in the world, that in an individual case, a particular record may not have become lost or destroyed, or be otherwise unavailable. For this reason, the Department requires an applicant to submit proof of the unavailability of primary documentation from Haiti before considering secondary evidence. In short, the only way of knowing that secondary evidence is the ''best evidence available,'' and is therefore acceptable documentation, is to first establish that the primary evidence is unavailable. However, with regard to applications for adjustment of status under HRIFA, there is a very significant factor that complicates the application of the ''best evidence available'' standard: the March 31, 2000, HRIFA deadline for the filing of applications by principal applicants. Because of this deadline, the Department has determined that it is best to temper this standard so as to allow applicants to file for adjustment of status using secondary evidence as long as they also submit evidence that they have requested the primary evidence from an official recordkeeper (*e.g.,* the Haitian National Archives). This approach will avoid the risk of persons being unable to apply for adjustment under HRIFA, while at the same time ensuring the integrity of the documentation. In instances in which the primary documentation arrives prior to the applicant's interview with an immigration officer or hearing before an immigration judge, the applicant would present the primary documentation at such interview or hearing. Where the documentation does not arrive prior to the interview or hearing, the interviewing officer or presiding judge would make a determination whether to make a decision based on the evidence available or to continue the case until the primary documentation arrives.

Some commenters were under the mistaken impression that the regulations, *see, e.g.* 8 CFR 245.15(i), always require that a Form I–94 be submitted as proof of entry. If the alien is in possession of the Form I–94, he or she should submit it, but if the alien never received or lost the Form I–94, it cannot be submitted. Where it is crucial that the applicant establish the date of arrival, as with children who arrived without parents, secondary documents may be submitted (such as transportation company records or an affidavit) in lieu of a missing or nonexistent Form I–94. The regulations have been amended to clarify this point. However, the applicant is still required to meet the requirements set forth in 8 CFR 245.15(i) pertaining to documenting when the applicant's physical presence in the United States began.

Some commenters suggested that the Department allow applicants to submit a list of documents already known to be in their Service files. While the regulations already contain this provision, the relevant provision in 8 CFR 245.15(m) has been revised to eliminate possible confusion on this issue.

6. Documenting Haitian Nationality

A number of commenters felt that it was not reasonable for the Department to require applicants under HRIFA to submit evidence of nationality. Many felt that any ''evidence'' of nationality already contained in the alien's file (including the applicant's prior claims of Haitian nationality) should be more than sufficient to prove that the applicant is Haitian. Additionally, some commenters stated that it is unreasonable to require the applicant to submit evidence of the unavailability of a document before the Service or Immigration Court will accept secondary evidence in lieu of that document. Finally, some commenters expressed concerns that children born in Guantanamo Bay of Haitian parents would be unable to document either Haitian or Cuban nationality.

It is important to note that the submission of evidence of nationality with the application for adjustment is a standard requirement for all applicants for adjustment and not a special requirement placed upon applicants under HRIFA. Likewise, it is standard practice to require evidence of the unavailability of a document of record before considering secondary evidence. (As previously stated, the Department of State's FAM reports that such documents are generally available in Haiti.) Furthermore, files that were created upon an alien's arrest or submission of an application for benefits may contain no documentary evidence of nationality, but may refer to the alien's (perhaps self-serving) statement of nationality. Despite some commenters' contention to the contrary, while rare, it is not unheard of for a non-Haitian alien to falsely claim to be Haitian when it is to his or her advantage. Accordingly, every prior claim to Haitian nationality cannot automatically be presumed to be valid.

However, even considering all of these factors, the Department is willing to concede that, in light of the relatively short filing period provided in the statute, it will be difficult—if not impossible—for many bona fide applicants to obtain the normally required documentation in time to file an application for adjustment before the March 31, 2000, deadline. Accordingly, the Department is making a number of changes to the regulation that it believes will significantly alleviate, if not eliminate, this problem.

First, as previously stated, the regulations will now allow an applicant to file the application without the birth record being included in the application package, if the applicant presents evidence that he or she is attempting to obtain the birth record. Once the birth record has been received, such applicant would present it at his or her interview before a Service officer or hearing before an immigration judge.

Second, the regulations will allow the Service or Immigration Court to consider secondary evidence of nationality, if the applicant submits evidence that he or she has unsuccessfully attempted to obtain the standard documentation. Such an unsuccessful attempt to obtain the standard documentation may be shown by submitting a photocopy of a letter from the applicant to the keeper of records requesting the document in question. If the primary evidence is received prior to the interview or hearing, the applicant can present it at that time; otherwise, the adjudicating officer or judge may make a determination based on the secondary evidence. The secondary evidence which may be taken into consideration could include baptismal and other religious records, passports, and evidence or statements already contained in the alien's Service file. However, it must also be noted that all determinations as to the weight and credibility to be given to the secondary evidence rest with the adjudicating officer or judge.

With regard to those children born in Guantanamo Bay, there are at least three methods by which an applicant could document his or her birth. First, the United States Naval authorities issued a certificate of live birth to the parents of each child born on that naval base. Second, the records of the Service would reflect the place of birth as being at Guantanamo Bay. Third, the records of the voluntary agency that assisted in the family's resettlement would also show that the applicant was born at the U.S. Naval Base at Guantanamo Bay. Any of these records could be used in support of an application for adjustment under HRIFA.

7. Documenting Presence in the United States on December 31, 1995

Some commenters contend that the statutory requirement contained in section 902(b)(1) that limits the benefits of HRIFA to nationals of Haiti who were ''present in the United States on December 31, 1995,'' also applies to those who had been present in the United States at some time before that date but had left and were not here on that specific date. This contention is based on the commenters' interpretation of the requirement in section 902(b)(2) of HRIFA that the applicant must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, but allows for absences of up to 180 days in the aggregate during that period. The commenters interpret the phrase ''beginning not later than December 31, 1995,'' as applying not only to the period of continuous presence, but also to the absences. This would have been a logical interpretation if section 902(b)(1) of HRIFA had allowed applicants to have been present ''on or before December 31, 1995,'' but it does not. The only way to read both sections in concert is that persons who departed prior to December 31, 1995, and were not physically present on that date are ineligible for benefits under HRIFA as principal applicants.

8. Documenting Presence in the United States Since December 31, 1995

Many commenters were concerned that the rough guideline for documenting continuity of presence (one document for each 90-day period) would be impossible for many bona fide applicants to meet due to cultural norms unique to Haitians. Others contended that due to other factors unique to Haitians, such as political, financial and geographical constraints, it is unlikely that any Haitians departed from the United States and returned since December 31, 1995, and that even a rough guideline of one document for each 90 days is excessive. A few commenters argued that the Department should provide a more generous guideline of one document for each 180 days, since the statute allows applicants to have been outside the United States for up to 180 days without breaking continuity of presence.

Because the statute allows an applicant to be outside the United States for up to 180 days *in the aggregate* without breaking continuity of presence, not absences of up to 180 days each, the Department finds that the argument that the guideline should be set at 180 days is without merit. However, the Department has determined that the guideline that had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit has instead become a hindrance that may result in some applicants believing that, without a certain minimum amount of documentation, they are ineligible to apply for or receive the benefit of adjustment of status under HRIFA. Accordingly, the guideline is being removed from the regulations and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of the statute. The adjudicating officer or immigration judge retains the right to request additional documentation should the evidence submitted by the applicant prove insufficient to meet his or her burden of proof.

9. Definition of the Term ''Parole''

Several commenters suggested that all Haitians released from Service custody before December 31, 1995, including those released on bond or on their own recognizance pursuant to section 242(a)(1) of the Act, 8 U.S.C. 1252(a), as it was in effect at that time, should qualify as ''parolees'' under HRIFA. In support of this suggestion, these commenters cited an April 19, 1999, Service policy memorandum. That memorandum concerned the eligibility of certain Cuban nationals for adjustment of status under the Cuban Adjustment Act, despite their having arrived at a place other than a designated port-of-entry. It has no impact on the eligibility of a person seeking to adjust status under HRIFA as a Haitian national who was paroled in the United States prior to December 31, 1995. The April 19, 1999, memorandum provided in pertinent part that the ''release of an *applicant for admission* from custody [pursuant to *section 236 of the Act*], without resolution of his or her admissibility, is a parole.'' (emphasis added.) The release from custody of someone other than an applicant for admission (*e.g.*, an overstay) does not constitute a parole. In the HRIFA context, an alien who had entered the United States without inspection, was detained by the Service, and was later released prior to December 31, 1995, cannot be seen as having been paroled into the United States because the alien was not an applicant for admission at the time of his or her release. The treatment of aliens present without inspection as applicants for admission was introduced to the immigration laws as a result of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in September 1996. These statutory reforms applied prospectively only. *See* IIRIRA section 309(c)(1). Accordingly, this suggestion will not be adopted.

10. Issues Pertaining to Applications Submitted by Children

A number of commenters felt that the Department's interpretation of ''child without parents in the United States'' was too restrictive and undercut the legislative intent. Others mistakenly believed that the Department adopted this position in order to combat possible fraud. In fact, the Department had simply taken the common meaning of the phrase since no definition was provided by the statute. According to the commenters, the focus should be on whether there has been a sustainable parent-child relationship between the child and his or her parents in the United States. In other words, who has or has had parental control over the child since his or her arrival into the United States? The Department agrees that this interpretation better reflects the legislative intent behind the provisions concerning children without parents. Therefore, the regulations have been amended by placing commas before and after the phrase ''without parents'' in 8 CFR 245.15(b)(1)(iii)(A).

A number of commenters felt that the regulations unnecessarily and onerously require children to show proof of their manner of arrival. Some commenters were under the mistaken impression that the regulations required that a Form I–94 be submitted in all cases. Where an applicant must establish his or her date of arrival, as with children who arrived without parents, the Form I–94 should be submitted whenever possible. However, as explained earlier, if the Form I–94 is not available, secondary documents may be submitted instead. In the case of a child arriving without parents, the secondary evidence may include the child's declaration which may be supported by other documentation (*e.g.*, his or her attendance record at school shortly after the claimed date of arrival). The regulations have been amended to clarify this point.

A number of commenters made suggestions regarding the documentation and level of proof required to prove eligibility as an orphaned or abandoned child. Some commenters suggested that an applicant's declaration of orphanage should be sufficient proof of orphanage or abandonment. Several commenters wanted secondary evidence to be

accepted as proof of orphanage or death of parents (*e.g.*, declarations, news articles, and publications). Other commenters suggested that the Department should allow any probative evidence which might be submitted to state, local, or other authority to establish orphanage or abandonment. The Department agrees that, where primary evidence (*e.g.*, official state or court documents) is unavailable, secondary evidence may be submitted to prove orphanage. Accordingly, the regulations have been modified to reflect many of these suggestions.

A number of commenters felt that a broader and more general definition of orphan should be used. Some commenters wanted to include as an orphan a child who has been irrevocably released by his or her sole or surviving parent who is unable to provide support. This is particularly relevant with regard to Haitian children who have had one of their parents disappear due to the actions of the former government of Haiti or due to tragedy at sea. The Department agrees and has so amended the regulation at § 245.15(a). The regulation now allows an otherwise eligible child to qualify for to qualify for classification as an orphan under section 902(b)(1)(C)(ii) of HRIFA if (1) the child has lost one parent through death or through disappearance, (2) competent Haitian authorities have certified that parent to be presumed dead, (3)the sole remaining parent is incapable of providing the proper care, and (4) the sole remaining parent has, in writing, irrevocably released the child for immigration to the United States. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act, such as petitions for classification under section 101(b)(1)(F) of the Act, where the surviving parent provision only pertains if the other parent is deceased.

One commenter believed that HRIFA should not be read as limiting orphans to those who lost their parents while under 21 years old. While, by common definition, the term ''orphan'' only applies to a child, and not to an adult, who has lost his or her parents, section 902(b)(1)(C) of HRIFA includes a unique set of qualifications on applicants seeking status based on orphanage. Those qualifications provide that the applicant must have been unmarried and under 21 years old at the time of his or her arrival in the United States and on December 31, 1995, and that he or she ''became orphaned subsequent to arrival in the United States.'' Because it is possible for someone who became 21 years old after December 31, 1995, and was later orphaned to still meet the language of the statute, the regulations will be amended in this regard. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act.

Many commenters felt that the provision for abandoned children should be guided by the best interest of the child. A number of commenters wanted the Department to accept a broader array of evidence, besides official state, local, or court records, to prove the issue of abandonment. These suggestions include school records and declarations by the child (or Service records) indicating nonresidence or nonrelationship with the parents. One commenter suggested that if a child has been left by his or her parents with a relative, that should be sufficient to constitute abandonment along with notarized statements stating such. Other commenters wanted to allow any probative evidence which might be submitted to state, local, or other authority to establish abandonment. Several commenters suggested that runaway children should be considered abandoned, especially where the child ran way due to the home environment. A number of commenters urged the Department to adopt the standard of abandonment as defined by the law in Florida, where, if the parent or guardian of a child ''makes no provision for the child's support and makes no effort to communicate with the child, * * * [the] situation is [deemed] sufficient to evince a willful rejection of parental obligations.'' F.S. 1997, Sec. 39.01. Other commenters suggested that the guidelines for abandonment established by the individual state having jurisdiction over the child should be adopted. The Department agrees that a broader category of evidence to prove abandonment should be allowed. Accordingly, the Department will apply the laws governing abandonment established by the individual state where the child resides, or resided at the time of the abandonment. The regulations have been amended to reflect this change.

A number of commenters wanted the Department to allow a dependent (of a HRIFA principal) to qualify for HRIFA benefits if he or she was a child on the date of HRIFA's enactment (October 21, 1998), or, alternatively, to toll the child's age as of October 21, 1998, until the date when his or her adjustment application is adjudicated. The Department will not accommodate this request. The Department has consistently held that an applicant must be eligible for the benefit being sought at the time of adjudication of the application, not on some prior date. *See, Matter of Hernandez-Puente,* 20 I & N Dec. 335, 337 (BIA 1991) (citing cases). The Department reaffirms this interpretation that benefits such as adjustment cannot be granted nunc pro tunc, which is essentially what the commenters have suggested.

11. Local Police Clearances

One commenter requested that the regulations provide a general exemption from the local police clearance requirement for persons who live or have lived in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, insofar as it relates to time periods when the applicant resided in that locale. The commenter listed New York City as an example of such a location. In the interest of reducing unnecessary burdens on both the applicants and on the local authorities, this suggestion has been adopted.

12. Reinstatement of Removal

Some persons expressed concerns about the applicability of section 241(a)(5) of the Act. 8 U.S.C. 1231. This section provides that:

(5) *Reinstatement of removal orders against aliens illegally reentering.* If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act [chapter], and the alien shall be removed under the prior order at any time after the reentry.

In versions codified under the United States Code, the final sentence refers to any relief under ''this chapter'' instead of ''this Act.'' This difference has resulted in some persons believing that the relief which affected persons are barred from seeking is only that relief provided under section 241 of the Act, not relief provided under other sections of the Act. A brief explanation is in order.

The language of HRIFA, as enacted by Congress, is the official text of the Act. When the laws enacted by Congress are codified in the U.S. Code, that codification is not ''positive law.'' The titles of the U.S. Code are organized into ''chapters,'' and so when an Act of Congress is codified it is referred to as a ''chapter'' of the Code. The

Immigration and Nationality Act is codified as Chapter 12 of Title 8 of the U.S. Code. Accordingly, the Immigration and Nationality Act provides that an alien subject to section 241(a)(5) of the Act is barred from any relief provided under any provision of the Act.

Some commenters contend that section 241(a)(5), which was added to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3546, applies only to an alien ordered removed from the United States in post-IIRIRA proceedings, and not to an alien ordered excluded and deported, or ordered deported, from the United States in pre-IIRIRA proceedings. These commenters fail to take into account section 309(d)(2) of IIRIRA which states that ''any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.'' *Id.* at sec. 309(d)(2).

Other commenters are under the impression that the Department holds that, when a person who departed the United States with an advance parole (Form I–512) returns to the United States, he or she is re-entering illegally and is subject to section 241(a)(5) of the Act. These commenters may be confusing advance parole with the separate requirement that someone who departs the United States while under an order of exclusion, deportation, or removal obtain permission to reapply for admission after removal, even if that person receives an advance parole document. (This ''permission to reapply'' issue is discussed in section 15 of this preamble on advance parole.) The Department would not, without more, view a return to the United States pursuant to an advance parole as an illegal reentry that would trigger the provisions of section 241(a)(5) of the Act.

13. Stay of Removal

Some commenters suggested that the regulation should provide for an automatic stay of removal which would take effect upon the filing of the application for adjustment of status under HRIFA. The Department considered this issue when drafting the interim rule and concluded that it would not be appropriate.

The Department feels that the Attorney General should have the flexibility of denying stay of removal requests where there are overriding negative factors. Since the statute calls for regulations which allow the HRIFA applicant to apply for (or ''seek'') a stay of deportation, removal, or exclusion, rather than to be granted or receive such stay, it is clear that the Department's interim regulation on this point is within the scope of what is intended by the statute. Accordingly, this suggestion will not be adopted.

14. Procedural Issues

A number of commenters made suggestions pertaining to the procedures by which the Department adjudicates HRIFA applications and otherwise administers the program. Some wanted the Service to make more frequent use of the interview waiver option and clarify unresolved issues through written correspondence. However, the decision on whether to waive an interview is made solely on a case-by-case basis and is wholly dependent on whether the adjudicating officer is satisfied that the application is approvable (or deniable) without further examination. In making his or her determination, the officer takes into consideration the information submitted by the applicant (which may include that submitted in response to a request for additional evidence from the Service), information contained in the alien's file, and all other pertinent information at the officer's disposal. The suggestion will not be adopted.

Some commenters wanted any applications postmarked by March 31, 2000, to be considered to have been properly filed, even if received at the Nebraska Service Center after that date. The Service has long held that an application may only be considered properly filed when it is received in a Service office, provided it is properly signed and executed and the requisite fee is attached. *See e.g.* 8 CFR 103.2(a)(7). The Department sees no reason to hold HRIFA applications to a different standard.

Finally, some commenters wanted the regulations to specify that the Service must provide notice of the cancellation of an order of exclusion, deportation, or removal, or a notice of termination of removal, deportation or removal proceedings, in addition to the notice of approval, whenever adjustment of status is granted to an alien who is subject to such order or in such proceedings. While the Service will endeavor to provide such notification, the fact remains that the regulations already provide that regardless of whether such notification is sent (or if sent, received), upon final approval of the application for adjustment of status under HRIFA by the Service or the Executive Office for Immigration Review (EOIR) (depending on which agency has jurisdiction), any pending order of exclusion, deportation or removal is canceled and any pending exclusion, deportation, or removal proceedings are terminated. Adding a regulatory requirement that separate notification to that effect be issued could only add confusion and raise questions as to whether the order had been canceled or the proceedings had been terminated.

15. Advance Parole for Persons Outside the United States

A number of interested parties submitted comments regarding procedures involved in authorizing parole for persons who either have applied for adjustment of status or wish to travel to the United States in order to apply for adjustment of status. Section 245.15(t)(1) of Title 8 of the Code of Federal Regulations sets forth procedures for persons who have already filed for adjustment of status and wish to depart from and return to the United States. Additionally, that provision sets forth procedures for otherwise eligible persons who are outside the United States and wish to be paroled into the country in order to file the application for adjustment of status. For purposes of clarity, these will be referred to as ''t-1 parole'' and ''t-2 parole'' in this discussion.

Some commenters wanted t-1 parole authorization to be automatic for all persons who apply for adjustment of status under HRIFA. Upon consideration, the Department finds that this suggestion is likely to create more problems than it would solve. Many applicants under the HRIFA program are not in possession of acceptable travel documents and encouraging them to travel without first obtaining advance parole is likely to result in increased difficulties at ports-of-entry and departure both here and abroad. If this suggestion were to be adopted, it would also be all but impossible to determine which returning applicants had filed bona fide applications and which had filed mala fide or frivolous ones. The lack of a recognized advance parole document would considerably exacerbate problems for the applicants, as well as for government and airline officials, and would inevitably result in bona fide applicants being stranded outside the country. The Department has decided not to adopt this suggestion.

Some commenters wanted the Department to extend the time during which the alien can travel to the United States after receiving an advance t-2 parole authorization beyond the current 60 days. The Department feels that under all but the most abnormal circumstances, a 60-day period should be sufficient for this purpose. The

Department also notes that if the recipient feels that he or she will need additional time to obtain travel documents and exit permits, he or she can request that the Service Officer-in-Charge in Port-au-Prince delay issuance of the advance parole document until a later date. Accordingly, this suggestion has not been adopted.

Some commenters wanted the 60-day t-2 parole issued upon the alien's arrival to be ''automatically extended'' upon the filing of the application for adjustment. This suggestion cannot be adopted for at least three reasons. First, technically, a parole is not extended, although at the completion of a parole, one option available to the district director having jurisdiction over the alien's residence in the United States is to reparole the alien if such action is warranted in accordance with the statutory requirements set forth in section 212(d)(5) of the Act. 8 U.S.C. 1182(d)(5). Second, the purpose of the t-2 parole is to allow the alien to file the application for adjustment of status under HRIFA, and that purpose has been accomplished once the alien files the application for adjustment. Any decision to reparole the alien would have to be made (by that district director) once the applicant for adjustment requests reparole through his or her local immigration office and presents his or her receipt for filing the application for adjustment at the Nebraska Service Center. Third, even if the other objections were overcome, the technology does not currently exist to provide for automatic reparole, and the cost of developing such technology would not be warranted by the relatively small number of persons who would benefit from it.

Some commenters wanted the regulations to extend the authority of the Director of the Nebraska Service Center to adjudicate advance t-2 parole requests. That authority currently expires on March 31, 2000. It must be noted that the authority to approve this type of parole request normally lies with the District Director in Mexico City for anyone in the Western Hemisphere, but not at a United States port-of-entry. The authority was extended to the Director of the Nebraska Service Center primarily because of the anticipated volume of requests under the HRIFA program. A decision will be made sometime during March 2000 as to whether both the Director of the Nebraska Service Center and the Director in Mexico City should have such authority, or if such authority should be vested solely with the District Director at Mexico City. Regardless of whether the authority of the Director of the Nebraska Service Center is extended beyond March 31, 2000, the District Director in Mexico City will continue to have such authority. It should also be noted that the Service can extend the authority of the Director of the Nebraska Service Center to issue such parole authorizations through an internal Service memorandum. It need not be done through the rulemaking process. *See* 8 CFR 2.1. However, should the authority of the Nebraska Service Center to issue such parole authorizations be extended, the Service will publish a notice to that effect in the **Federal Register**.

Finally, an explanation is in order regarding the effect of departure from the United States while under an order of exclusion, deportation, or removal, including situations in which the alien first obtains an advance parole authorization, Form I–512. A Form I–512 is a document which authorizes an immigration officer to parole the bearer into the United States upon inspection at a port-of-entry. It neither contains nor connotes any special benefits for the bearer at the point of his or her departure from the United States. Whenever an alien who is under an outstanding order of exclusion, deportation, or removal departs from the United States, he or she effects or executes that order. This is true regardless of whether he or she is in possession of an I–512 authorizing a parole upon his or her return. Once the exclusion, deportation, or removal order has been executed, an alien must apply for and be granted permission to reapply (Form I–212) before he or she embarks or reembarks for his or her return travel to the United States. Failure to obtain such permission results in the alien being inadmissible to the United States and, therefore, ineligible for adjustment of status in the United States.

16. Employment Authorization Documents

Some commenters felt that the Service should automatically extend the work authorization for persons who had been granted Deferred Enforced Departure (DED) under the Presidential directive to the Attorney General of December 23, 1997. That order allowed the Service to grant DED status, with work authorization, to eligible applicants until December 22, 1998. Shortly before December 22, 1998, the Department published a notice in the **Federal Register** which explained that although it could not extend the DED program itself, it was extending the validity of the affiliated Employment Authorization Documents (EADs) for another year (until December 22, 1999) to give the Department time to promulgate regulations and eligible applicants an opportunity to apply for both adjustment of status and new EADs (as adjustment applicants). The Service recently published a notice in the **Federal Register**, at 64 FR 71151, which re-extended the validity of these EADs until September 30, 2000. Because this matter has been addressed by separate action, it will not be addressed here.

17. Comments Relating to the Procedures of the Executive Office for Immigration Review.

Many commenters suggested that Haitians eligible for HRIFA relief should be permitted to administratively close their cases without the concurrence of the Service. Currently, those aliens in proceedings before the Immigration Court or Board of Immigration Appeals (Board) may move to have these proceedings administratively closed for the purpose of filing an application for adjustment under HRIFA with the Service; however, the Service must concur with the administrative closure of the case.

The Department has decided not to change this procedure because it is established law that has been applied to other types of proceedings and not just those involving HRIFA-eligible aliens. Administrative closure is a convenience that allows for the removal of a case from the calendar in appropriate situations. An immigration judge or the Board may not administratively close a case if it is opposed by either party. *See Matter of Lopez-Barrios,* 20 I & N Dec. 203, 204 (BIA 1990). The Department does not find that aliens applying for HRIFA are in a substantially different position from other aliens requesting administrative closure of their cases. Therefore, an exception to the rule is not warranted.

Two groups suggested that the interim rule limits motions to reopen an EOIR decision denying HRIFA relief after a failure to appear by confining the motions to current reopening and rescission standards. They argue that reopening and rescission standards for certain applicants with final exclusion and deportation orders are improper because aliens with pre-IMMACT 90 deportation cases or aliens in exclusion proceedings predating IIRIRA's fusion of exclusion and deportation are subject to the ''reasonable cause'' standard for reopening or rescission of a case before EOIR.

The Department chose to apply current rescission and reopening standards in this particular situation because it has created a new proceeding applicable exclusively to HRIFA-only relief. Rescission or reopening in 8 CFR

245.15(s)(4) refers to 8 CFR 245.15(s)(1), and only discusses the situation involving aliens with final orders who applied for adjustment of status under section 902 of HRIFA with the Service, were denied that relief by the Service, and were then referred to the Immigration Court on Form I–290C for adjudication of their eligibility for such relief. The rescission or reopening of proceedings under 8 CFR 245.15(s)(4) refers exclusively to the HRIFA-only proceeding and not the original deportation or exclusion proceeding. Accordingly, the standard for determining whether an alien is eligible for rescission or reopening under this subsection refers not to the original proceeding and the old standard, but rather to the new proceedings and the current standard. Because the Department created this new type of proceeding, it considered it appropriate to choose a standard consistent with recent reopening standards for removal proceedings put in place by Congress.

*Are Any Other Changes Being Made to The Regulation?*

Section 245.15(d)(4) has been revised to clarify that in establishing the relationship between a principal beneficiary and a dependent beneficiary, the standards of documentation set forth in 8 CFR 204.2 apply. No other changes are being made to the regulation, with the exception of minor editorial corrections.

It has come to the Department's attention that the application of current regulations (8 C.F.R. 103.2(a)(7)) and practice to HRIFA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the HRIFA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose HRIFA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose HRIFA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely HRIFA adjustment application.

**Good Cause Exception**

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). By statute, all HRIFA principal adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that HRIFA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon 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. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

**Executive Order 13132**

This 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**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 final 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) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

**Plain Language in Government Writing**

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

**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, the interim rule amending 8 CFR Parts 3, 212, 240, 245, 274a, and 299, which was published at 64 FR 25756 on May 12, 1999, is adopted as a final rule with the following changes:

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

1. 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.

### § 212.17 [Amended]

2. Section 212.7 is amended by:

a. Removing the phrase ''§ 245.15(l)'' and adding in its place the phrase ''§ 245.15(t)'' in both the heading and the text of paragraph (a)(1)(iii); and by

b. Removing the phrase ''§ 245.15(l)(2)'' and adding in its place the phrase ''§ 245.15(t)(2)'' in paragraph (b)(2)(iv).

* * * * *

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

3. The authority citation for part 245 continues 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.

4. Section 245.15 is amended by:

a. Revising the definitions of the terms ''*Abandoned* and *abandonment*'' and ''*Orphan* and *orphaned*'' in paragraph (a);

b. Adding a new definition for the term ''*Sole remaining parent*'' at the end of paragraph (a);

c. Revising paragraph (b)(1)(iii)(A);

d. Revising paragraph (c)(2);

e. Revising paragraph (d)(4);

f. Adding two new sentences at the end of paragraph (e)(2);

g. Revising paragraph (h)(5);

h. Revising paragraph (j)(1);

i. Revising paragraph (k)(3)(i);

j. Revising paragraph (k)(3)(ii)(B);

k. Revising paragraphs (k)(4)(i) and (ii);

l. Revising paragraphs (k)(5)(i) and (ii);

m. Revising paragraph (m);

n. Amending the last sentence in paragraph (t)(2)(i) by removing the phrase ''paragraph (f)'' and adding in its place the phrase ''paragraph (h)''; and by

o. Amending paragraph (u)(2) by removing the phrase ''paragraph (l)(2)'' and adding in its place the phrase ''paragraph (t)(2)''.

The revised and added text reads as follows:

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

(a) * * *

*Abandoned* and *abandonment* mean that both parents have, or the sole or surviving parent has, or in the case of a child who has been placed into a guardianship, the child's guardian or guardians have, willfully forsaken all parental or guardianship 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).

* * * * *

*Orphan* and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents due to any of the following:

(1) The death or disappearance of, desertion by, or separation or loss from both parents, as those terms are defined in § 204.3(b) of this chapter;

(2) The irrevocable and written release of all parental rights by the sole parent, as that term is defined in § 204.3(b) of this chapter, based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care; or

(3) The death or disappearance, as that term is defined in § 204.3(b) of this chapter, of one parent and the irrevocable and written release of all parental rights by the sole remaining parent based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care.

* * * * *

*Sole remaining parent* means a person who is the child's only parent because:

(1) The child's other parent has died; or

(2) The child's other parent has been certified by competent Haitian authorities to be presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(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;

* * * * *

(c) * * *

(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. For purposes of § 245.15 of this chapter only, an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted by a principal applicant for benefits under HRIFA may be considered to have been properly filed if it:

(i) Is received not later than March 31, 2000, at the Nebraska Service Center, the Board, or the Immigration Court having jurisdiction;

(ii) Has been properly completed and signed by the applicant;

(iii) Identifies the provision of HRIFA under which the applicant is seeking adjustment of status; and

(iv) Is accompanied by either:

(A) The correct fee as specified in § 103.7(b)(1) of this chapter; or

(B) A request for a fee waiver in accordance with § 103.7(c) of this chapter, provided such fee waiver request is subsequently granted; however, if such a fee waiver request is subsequently denied and the applicant submits the require fee within 30 days of the date of any notice that the fee waiver request had been denied, the application shall be regarded as having been filed before the statutory deadline. In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the application shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied.

* * * * *

(d) * * *

(4) *Relationship.* The qualifying relationship to the principal alien must have existed at the time the principal was granted adjustment of status and must continue to exist at the time the dependent alien is granted adjustment of status. To establish the qualifying relationship to the principal alien, evidence must be submitted in accordance with § 204.2 of this chapter. Such evidence should consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter;

* * * * *

(e) * * *

(2) * * * In considering an application for waiver under section 212(g) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who was paroled into the United States from the U.S. Naval Base at Guantanamo Bay, for the purpose of receiving treatment of an HIV or AIDS condition, the fact that his or her arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor when weighing discretionary factors. In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

* * * * *

(h) * * *

(5) *Police clearances.* If the applicant is 14 years old 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. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or State policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

* * * * *

(j) * * *

(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 nongovernmental 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.

* * * * *

(k) * * *

(3) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(3)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) * * *

(B) Evidence showing that the applicant's parents did not live in the United States with the applicant. Such evidence may include, but is not limited to, documentation or affidavits 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, or (if they have been in the United States) that the applicant and his or her parents did not reside together.

(4) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(4)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; 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;

(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); or

(C) Evidence of:

(*1*) Either:

(*i*) The child having only a sole parent, as that term is defined in § 204.3(b) of this chapter;

(*ii*) The death of one parent; or

(*iii*) Certification by competent Haitian authorities that one parent is presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter; and

(*2*) A copy of a written statement executed by the sole parent, or the sole remaining parent, irrevocably releasing all parental rights based upon the inability of that parent to provide proper care for the child.

(5) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(5)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) Either:

(A) 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; or

(B) Evidence to establish that the applicant would have been considered to be abandoned according to the laws of the State where he or she resides, or where he or she resided at the time of the abandonment, had the issue been presented to the proper authorities.

* * * * *

(m) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in 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 events. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. The unavailability of such documents may be shown by submission of a copy of the written request for a copy of such documents which was sent to the official keeper of the records. 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) or (j) of this section. However, subject to verification by the Service, if the documentation specified in this paragraph or in paragraphs (h)(3)(i), (i), (j), (l)(1), and (l)(2) of this section 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.

* * * * *

## PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

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

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat 890, as amended by Pub. L. 104–34, 110 Stat 1321.

### § 274a.12 [Amended]

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

### § 274a.13 [Amended]

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

## PART 299—IMMIGRATION FORMS

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

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

9. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement C'', to read as follows:

### § 299.1 Prescribed forms.

* * * * *

| Form No. | Edition date | Title |
|---|---|---|
| * * | * | * * * * * |
| I–485 Supplement C | 12–01–99 | HRIFA Supplement to Form I–485 Instructions. |
| * * | * | * * * * * |

Dated: March 17, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–7204 Filed 3–21–00; 3:47 pm]

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

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

**[INS No. 1893–97; AG Order No. 2293–2000]**

**RIN 1115–AF04**

## Adjustment of Status for Certain Nationals of Nicaragua and Cuba

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) by establishing procedures for certain nationals of Nicaragua and Cuba 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.