U.S. Citizenship and Immigration Services

NOTE:

The USCIS Policy Manual is our centralized online repository for immigration policies. We are working quickly to update and move material from the Adjudicator's Field Manual to the Policy Manual. Please check that resource, along with our Policy Memoranda page, to verify information you find in the Adjudicator's Field Manual. If you have questions or concerns about any discrepancies among these resources, please contact USCISPolicyManual@uscis.dhs.gov.

23.13 Adjustment of Status under the Haitian Refugee Immigration Fairness Act, Pub. L. 105-277 (HRIFA).

(a) General .

HRIFA, a limited provision which provides relief in the form of lawful permanent residence to certain Haitian nationals, was signed into law on October 21, 1998. Regulations governing the filing and adjudication of applications for HRIFA adjustment are contained in 8 CFR 245.15 , although the HRIFA statute is separate and apart from section 245 of the Act. The HRIFA program expires March 31, 2000 for principal applicants, and their applications must be properly filed at the Nebraska Service Center not later than that date. For qualifying dependent applicants, the application period for HRIFA adjustment remains open indefinitely.

(b) Receipting and Data Entry by Support Services Contractor Personnel .

Unless in deportation, removal, or exclusion proceedings that have not been administratively closed with consent of USCIS or INS (or where a motion to reopen or reconsider has not been continued indefinitely with the consent of USCIS or INS), the applicant must file Form I-485

(revised 9/9/92) with the Nebraska Service Center, in accordance with the instructions contained on that form as modified by Form I-485 Supplement C. (An alien who is in proceedings should file the application with the immigration judge having jurisdiction over his or her case.) A separate I-485 application, including the fee specified in **8 CFR 103.7** , is required for each applicant and dependent.

The support services contractor receiving the mail date stamps the application immediately upon receipt, assures the application has the correct fee and that it has been signed by the applicant. The contractor records the fee, endorses and forwards the check (or other payment vehicle) to the fee account, and places each new application in a bar-coded receipt file for delivery to the next stage of the process. Once this step has been completed, the application has been received and can no longer be rejected without going through the process of refunding the fee.

To the extent possible, the contractor should bundle applications submitted by family groups to facilitate later processing.

The contractor completes data entry into CLAIMS, scans the photograph and signature for later card production, preparation of Form I-181 , and for other CLAIMS notices and reports. The CLAIMS system will automatically generate a notice to the applicant advising him or her of location of the ASC where he/she should report for fingerprinting, and when.

Finally, as part of the data entry process for HRIFA cases (and unlike the data entry process for most other applications), the contractor must enter the classification code under which the applicant is seeking adjustment of status. This additional requirement is the result of the statutory mandate contained in HRIFA that the Comptroller General of the United States (i.e., the GAO) report to Congress on a semi-annual basis regarding the number of HRIFA cases received and the number of HRIFA cases completed . The statute goes on to require that the report include a breakdown specifying the number of applicants by their basis of eligibility. In order for the GAO to meet this statutory mandate, the CLAIMS system must be able to generate accurate reports containing such specificity.

(c) Preliminary Screening by USCIS Support Personnel .

(1) Processing Actions .

Preliminary review of the application is performed by USCIS personnel after the initial receipting process is complete. The preliminary review ensures that all relevant questions on the form have been completed, that necessary supporting documents are attached, and that the case is ready for adjudication. If the application is lacking relevant answers or documents, these must be requested from the applicant through the I-797 procedure once the application has been receipted. If such deficiencies can be id entified prior to fee acceptance, a "rejection" notice may be used, rather than a request for additional information. The preliminary reviewer may annotate the application with information important to the adjudicator, taking care to always identify such

notations as the work of the preliminary reviewer. Follow the steps listed below in items (A) through (Q).

(A) Ensure that the application is being submitted under the provisions of HRIFA.

Block "h" should be checked and endorsed with one of the following classifications, as specified in the instructions:

- HRIFA principal - asylum applicant
- HRIFA principal - parolee
- HRIFA principal - child without parents
- HRIFA principal - orphaned child
- HRIFA principal - abandoned child
- HRIFA dependent - spouse
- HRIFA dependent - child under 21 years old
- HRIFA dependent - unmarried son or daughter

An application from a "HRIFA principal" must be received prior to April 1, 2000. (Remember that there is no filing deadline for a HRIFA dependent.)

(B) Verify the applicant's nationality .

Except as noted below, each HRIFA applicant, including any dependent applicant , must submit evidence of Haitian nationality. Ordinarily this will be in the form of a birth certificate; however, someone may submit other documentation, such as a baptismal certificate or a copy of his or her passport. It is also possible that an applicant who was not born in Haiti derived or acquired such nationality, and may submit evidence of such.

Note

In many cases, the applicant's birth record may be unavailable, especially considering the short time period during which a principal applicant may file an application. Accordingly, if the applicant is applying as either an alien who applied for asylum prior to December 31, 1995, or as a parolee prior to December 31, 1995, and the record created at that time shows that the alien indicated Haitian nationality, the birth record requirement may be waived by the adjudicating officer during the interview. In such cases, annotate the applicant's file to indicate that the birth record was not submitted and that the issue of nationality must be determin ed by the interviewing officer.

(C) Examine Form I-485 for completeness.

Local police clearances and ADIT-style photographs are required. However, if the applicant attempted to obtain local police clearances, but was unable to do so because of State or local policies, he/she may submit evidence of such in lieu of the local police clearances. The director of the NSC has the authority to waive the local police clearances requirement where the applicant is able to establish that he/she made a good faith effort to obtain them.

(D) Ensure that clearances have been initiated by contractor personnel.

(E) Check for a completed medical examination record, Form I-693, endorsed by a USCIS-approved physician and that all vaccination requirements have been met.

(F) Ensure that the applicant has submitted evidence regarding the physical presence requirements of HRIFA. A principal alien must submit evidence that he or she:

- was present in the U.S. on December 31, 1995; and

- maintained continuing physical presence through the date the adjustment application is filed (not counting absences totaling 180 days or less);

- and that he or she falls within one of the five eligible classes . A separate statement is required explaining the duration and purpose of every absence since the last arrival on or before December 31, 1995.

(G) Evidence of presence in the U.S.

On December 31, 1995 may consist of the following types of documentation:

- Copy of Form I-94 , issued upon arrival on or prior to 12/31/95;

- Copy of Form I-122 issued on or prior to 12/31/95;

- Copy of Form I-221 issued on or prior to 12/31/95;

- Evidence of an application for any other benefit under the INA : Copy of a filing receipt or other official correspondence establishing submission of any application by or on behalf of the applicant on or prior to 12/31/95, which establishes the applicant's presence in the U.S. on 12/31/95;

- Other official evidence : Other documentation issued by, or filed with, a Federal, State, or local authority which shows that the applicant was present in the U.S. on 12/31/95. Such documents must bear the official seal of the issuing authority (if normally present), be dated at the time of issuance or filing, and be dated not later than 12/31/95. Included in this group are items such as: motor vehicle record; driver's license or ID card; public hospital record; public school record; and income tax records;

- Certain school records : For persons applying as children as described in **section 902(b)(1)(C)** of HRIFA, records of the private or religious school which the applicant attended, provided that the private or religious school was registered, approved, or licensed by the appropriate State or local authorities, was accredited by the appropriate State or local accrediting

body or private school association, or maintains enrollment records in accordance with State or local requirements or standards. If the adjudicating officer has doubts whether the private or religious school meets these standards, he o r she should consult with the district's student school officer of the Office of Non-Public Education, U.S. Department of Education by telephone at 202-401-1365/0375 or by fax at 202-401-1368.

Note

Such evidence may relate to presence in the United States on a date prior to the "magic" date of December 31, 1995. Since people may not be able to document where they were on a particular date the regulations allow an applicant to submit evidence of presence in the United States on a date prior to December 31, 1995, so long as the adjudicating officer is satisfied that the alien did not leave the country between that prior date and December 31, 1995. The amount of material needed to satisfy the adjudicat ing officer will vary from case to case. In many, if not most, situations, the officer should be satisfied with the applicant's oral or written claim that he or she did not depart the United States between the two dates, especially if the gap between them is rather small. On the other hand, if there is some indication that the alien may have left the country, or if the gap between the dates is especially large, the officer can require additional evidence. In deciding whether to ask for additional evidenc e, the officer may be guided by logic and common sense, as much as by documentation. Furthermore, experience has shown that Haitians who arrived in the United States during the 1990's and fall within the categories specified in item I below rarely, if ever, departed from the United States. Generally speaking, an applicant's verbal or written statement that he or she had not departed since arrival, coupled with the absence of any record of departure, may be accepted at face value.

(H) Requirements for submission of evidence of continuing physical presence are more flexible.

These may consist of either governmental or non-governmental documentation, including lease agreements, copies of tax returns, regular bills showing account activity and the applicant's mailing address, canceled checks or bank records, employment records, etc. While there is no specific requirement establishing a number of documents which must be submitted (i.e., it is not necessary to submit a utility bill for every month since entry), ideally, documents will not leave unaccounted periods of more than 90 days. Furthermore, once an applicant has established the existence of an ongoing family unit, documentation pertaining to one family member may also be used by other members of that family unit to establish continuity of presence. For example, a parent may use a grade school report card issued to his or her child. The credibility and volume of these documents will heavily influence the decision on whether or not an interview will be required. Affidavits executed after the fact attesting to the presence of an applicant are not acceptable. However, it may be necessary to use affidavits to clarify discrepancies such as employment under an assumed name, etc.

Note

See the discussion in item **(G)** regarding acceptance of verbal or written statements of non-departure at face value.

(I) Along with the physical presence requirements above, a principal applicant must submit evidence to show that he or she falls within one of the five eligible classes below:

- Haitians who filed for asylum before December 31, 1995;

- Haitians 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;

- Haitian children who arrived in the U.S. without parents and have remained without parents in the U.S. since arrival;

- Haitian children who became orphaned subsequent to arrival in the U.S.; and

- Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since.

For the last three of these classes, the applicant must have been a child at the time of arrival in the U.S. and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In other words, someone who turned 21 and/or married on or after January 1, 1996, could still adjust status under the provisions of HRIFA as a child. Furthermore, any otherwise-eligible Haitian dependents acquired through a marriage occurring on or after January 1, 1996, could apply for adjustment under the provisions of HRIFA **section 902(d)** relating to dependents.

(J) If an applicant is unable to produce an INS or USCIS-issued document, but claims that such a document exists, records must be checked to verify the claim .

If the claim is verified, attach a printout or other evidence from the record. If the claim cannot

be verified, annotate the application: "Unable to verify through USCIS records", adding your initials and the date.

(K) If the applicant states he or she is inadmissible to the United States, check to see that he or she filed a waiver application, the fee was paid, and that the application was properly completed .

Applicants who are inadmissible (except under sections **212(a)(4)** , **(5)** , **(6)(A)** , **(7)(A)** and **(9)(B)** , which are inapplicable) may concurrently submit an application for any waiver for which they claim eligibility.

(L) Check for evidence of eligibility as a dependent, if the alien is applying as such :

- Evidence of Haitian nationality ;

- Evidence of relationship . A HRIFA dependent must submit evidence of the existence of the claimed relationship at the time of the principal beneficiary's adjustment of status, and that such relationship continued to exist at least through the time that the dependent is granted adjustment. Such evidence is the same as would be required for an I-130 petition (i.e., marriage certificate and evidence of termination of any prior marriages for a spouse, birth certificate for a child, etc);

- Evidence of presence, if applying as an unmarried son or daughter . The unmarried son or daughter of a HRIFA applicant must show evidence of continuous physical presence in the U.S. since December 31, 1995, as well as information regarding subsequent absences. A dependent son or daughter must also submit a statement regarding any and all absences since December 31, 1995, and provide evidence to document his or her continuous presence. For documentary requirements for proving continuity of presence, refer to the discussion pertaining to principal applicants above.

Note

A spouse or child must be physically present in the U.S. in order to apply, but need not have been present on December 31, 1995, or during any particular period since that date, and need not submit a statement regarding subsequent absences or continuing presence. Furthermore, see the discussion in item **(G)** regarding acceptance of verbal or written statements of non-departure at face value.

(M) Check for a Form I-94, either original or a copy, which must be submitted if the applicant claims a lawful entry .

However, the lack of such entry (or of the Form I-94 , if the alien claims it was lost) does not affect the alien's eligibility for adjustment under HRIFA.

(N) Check to see that the alien has attached a statement regarding his or absences from the United States since December 31, 1995 .

This statement is in addition to the evidence of continuity of presence discussed above.

(O) Determine if a there are one or more existing "A" files relating to the applicant .

Files must immediately be requested. If no file exists, one must be created. Create a temporary file if an existing "A" file is located in another office. It is critical that any and all existing files be identified and obtained prior to adjudication. Review supporting documents closely to determine existing file number(s).

(P) If the application is to be adjudicated by an NSC adjudicator, place the case on hold pending the results of the records checks and fingerprint clearance .

Once the checks have been completed, remove the hold and route the file to the adjudicator.

(Q) If the application is being routed to a local office for interview and adjudication :

- At NSC, update CLAIMS and transfer the file to the appropriate local office. CLAIMS will generate a notice to the applicant advising him/her that the application has been transferred and update USCIS.

- At the local office, shelve the file by receipt date until the records check and

fingerprint clearances are complete. At that point, schedule the case for the next available interview time and reshelve the case according to the interview date. (However, see the discussion below regarding employment authorization.)

(2) Screening Notes .

(A) Examining Documentation Establishing Physical Presence in the U.S. and Continuous Physical Presence .

Each of the forms of documentation of presence in the U.S. on or before December 31, 1995, listed above must establish that the relating event or action occurred on or prior to December 31, 1995, not simply claim that the alien was present prior to that date. For example, if presence is documented by the filing of an asylum application, the application itself must have been submitted on or before December 31, 1995. A mere statement in a later application claiming entry prior to that date is insufficient. If Social Security earnings statements are used, those must reflect earnings beginning on or before December 31, 1995. Secondary evidence, such as affidavits s hould normally not be submitted or accepted unless such claims can be verified in INS records. Where the documentation cannot be verified by INS records or differs from information contained in INS records, the file should be so noted. Evidence of entry on or before December 31, 1995 which is not verifiable from INS records shall be regarded as fraud-prone. All such cases (including all cases supported by Social Security records and all cases supported by documents issued by other (non-USCIS) Federal, State or local agencies) must be referred for a personal interview.

Documentation of continuous physical presence may be considered less restrictively. In general, reliable, government-issued documents which strongly support a claim of continuous physical presence for the required period should be accepted without official verification. Other, less reliable documents, such as documents supported by affidavits purporting to explain a falsely assumed identity, should be routinely or at least randomly verified and the case referred for interview. Where the file or other inf ormation casts doubt on the continuing physical presence since entry, this should be so noted and the case referred for a personal interview.

(B) Secondary Evidence .

Other than as discussed in paragraph **(A)** , an alien may submit secondary evidence in support of the application, if the alien establishes that the primary evidence is unavailable. For example, a baptismal record may be submitted for a birth certificate which cannot be obtained due to destruction of the records by fire or warfare. (See also the note to item (1)(B) regarding evidence of nationality already on file.)

(C) Dependents .

It is important to note that the statute provides for two distinct classes of dependents:

- Spouses and children under age 21, and

- Unmarried sons and daughters who are 21 years of age or older.

All dependents must be Haitian nationals . All dependents must provide evidence of the claimed relationship, in the same manner required for a visa petition or any other adjustment. The spouse or child (under 21) of a HRIFA principal is not required to have been present on or since December 31, 1995, but must demonstrate that the qualifying relationship existed when the principal's application was approved , and continues to exist through the time the dependent's application is approved. The unmarried son or daughter (21 and older) must demonstrate physical presence since December 31, 1995, but not necessarily on that date. Claims of dependent eligibility are more likely to be supported by documents issued by authorities other than USCIS. If a principal applicant's supporting documents are supported by INS records, but the dependents are supported by other sources, the adjudicating officer need not refer the case for interview, but may do so if there is any suspicion regarding the documentation submitted. For example, if a dependent claims to have been present in the United States at a time when the principal's previous asylum application shows that dependent was still residing in Haiti, the file should be so noted and the case referred for an interview at a local USCIS office. An application by a dependent may be filed concurrently with or subsequent to the principal applicant's but may not be approved until the principal applicant is granted permanent residence.

(D) Inadmissibility .

Several grounds of inadmissibility are inapplicable to HRIFA cases, others may be waived. Those which are statutorily inapplicable include:

- **Section 212(a) (4)** - public charge;

- **Section 212(a)(5)** - labor certification and qualifications for certain immigrants;

- **Section 212(a)(6)(A)** - unlawful entry; **212(a)(7)(A)** - immigrant visa; and

- **Section 212(a)(9)(B)** - 180/365 day unlawful presence.

Waivers of other applicable grounds may be available on a case-by-case basis as otherwise provided in the INA and **8 CFR 212** . If, upon review, it appears the applicant may be inadmissible, the file should be so noted to alert the adjudicator of the possibility.

(d) Adjudication .

(1) General Processing Actions .

The following actions are required during the adjudicative process:

(A) Verify that the application was timely filed, if from a principal applicant ,.

(B) Review any existing file .

This action is mandatory, but may be waived if the electronic record supports the alien's claimed status and the file cannot be retrieved within 90 days. An interview is required when a file cannot be located, even if the electronic record supports the alien's claim. Review the file to determine if there is evidence of the required physical presence. The file may also contain evidence, such as an advance parole document, that the alien has been outside the United States for more than 180 days, or it may contain evidence of inadmissibility on other grounds. One of the more critical items of information which must be obtained from the file is whether the alien is in exclusion, dep ortation or removal proceedings, since this relates directly to the issue of whether USCIS or EOIR has jurisdiction.

(C) Determine jurisdiction .

In the event an adjustment applicant is in exclusion, deportation or removal proceedings that have not been administratively closed, refer the case to the appropriate Immigration Court. EOIR has authority to grant adjustment of status under HRIFA in any case where the alien is in proceedings. USCIS has jurisdiction for HRIFA adjustment over (1) aliens who have not been placed in proceedings and (2) aliens under final orders of exclusion, deportation, or removal who

had not filed a motion to reopen with EOIR before the date on which the HRIFA regulations were published (05-11-99). USCIS also has jurisdiction over any cases involving aliens whose proceedings have been administratively closed, or in whose case a motion to reopen or reconsider has been continued indefinitely with the consent of the INS or USCIS.

(D) Carefully review supporting documents and statements made on the application for completeness and for any indication the applicant does not meet the requirements of HRIFA regarding physical presence, nationality and admissibility .

Any discrepancy between the applicant's statements and the evidence contained in the file may be resolved during the personal interview at a local office. Remember that (with regard to principal applicants) there are two aspects to the physical presence requirement. The first aspect deals with the physical presence on December 31, 1998, which can only be established through one of the specified forms of documentation listed above in paragraph (c)(1). The other aspect has to do with the continuity of physical presence, which can be established through a wider range of supporting documentation. If there is any doubt about either aspect, such doubt must be resolved during the personal interview. Remember also that in cases where the commencement of presence is supported only by evidence which cannot be verified through the USCIS file (such as a Social Security or other non-USCIS document), an interview is mandatory.

(E) Ensure that background checks have been completed, if the applicant is 14 years of age or older .

If there is a positive response to any background check which indicates possible inadmissibility, refer the case for an interview at the local office. Review local police clearances to ensure the requisite clearance has been submitted for each jurisdiction in the U.S. where the alien has resided for at least six months. In some cases, the alien may have attempted to obtain the required local police clearances, but was unable to do so due to local or State policies prohibiting the issuance of such clearanc es. If the alien submits proof of both his or her attempt to obtain such clearances and of the local or State prohibitions, the Director of the Nebraska Service Center may waive the requirement that local police clearances be submitted.

(F) Ensure fingerprint checks have been properly completed .

If the applicant fails to comply with the instructions for obtaining fingerprints, the application for adjustment of status must be denied for failure to prosecute.

(G) Review Form I-693 medical examination .

The examination form must be signed by a designated physician. If there is any medical condition which would result in a finding of inadmissibility, determine if a waiver is available.

(H) Determine if there is any regulatory or statutory bar which prohibits favorable consideration of the application or if a waiver is required .

It is important to note that HRIFA adjustment cases are not subject to the limitations and requirements of **section 245** of the Immigration and Nationality Act, such as the bars to adjustment of status for illegal entry or unlawful employment.

(I) Check for A or G status .

Although unlikely, if a HRIFA applicant indicates he or she previously or currently held A or G non-immigrant status, Form I-566 is required. If the State Department's response to the I-566 indicates that the applicant has diplomatic immunity, Form I-508 will also be required.

(J) Determine if the continuous physical presence requirement has been met .

HRIFA permits an alien (who is applying as a principal applicant or as an unmarried son or daughter of a principal applicant) to have been outside the United States for a maximum of 180 days in the aggregate since December 31, 1995. Any day on which the alien was present for at least part of the day should not be counted towards the 180 day cumulative total. If an absence commenced prior to December 31, 1995, count only the time beginning on that date.

(2) Special Processing Actions Relating to NSC Adjudication . **[Chapter 23.13(d)(2) updated 12-04-2006]**

While a large percentage of applications will be able to be adjudicated at the Nebraska Service Center without referral to a local office for an interview, many others will require such referral and

interview. The following types of cases must be referred to a local office for interview and adjudication:

(A) Any case involving an inadmissible alien (other than those inadmissible under grounds which HRIFA specifically exempts), unless , in the case of an applicant who is seeking to adjust status as the dependent child of a HRIFA principal, the Nebraska Service Center Director requests that a Form I-601 be filed with the Service Center and the Service Center Director determines that the applicant is clearly eligible for approval of the waiver of the applicable ground of inadmissibility.

(B) Any case involving a waiver of inadmissibility unless , in the case of an applicant who is seeking to adjust status as the dependent child of a HRIFA principal, the Service Center Director determines that the applicant is clearly eligible for approval of the Form I-601 waiver.

(C) Any case involving a medical condition which would result in a finding of inadmissibility unless , in the case of an applicant who is seeking to adjust as the dependent child of a HRIFA principal, the Service Center Director requests that a Form I-601 be filed with the Service Center, and the Service Center Director determines that the applicant is clearly eligible for approval of the waiver of the applicable ground of inadmissibility.

(D) Any case where fraud indicators are present.

(3) Special Processing Actions Relating to Local Office Interview and Adjudication . **[Chapter 23.13(d)(3) updated 12-04-2006]**

When adjudicating an application for adjustment of status filed by an alien who requires a waiver of inadmissibility, remember that while HRIFA does not give USCIS discretionary authority to deny the application for adjustment of status itself, USCIS does retain its discretionary authority when adjudicating any application for a waiver of inadmissibility.

If the alien is statutorily ineligible for adjustment of status without consideration of a waiver, and his or her application for a waiver is denied as a matter of discretion, the adjustment application must also be denied. During the course of adjudicating such waiver, the adjudicator should elicit all information, both favorable and unfavorable, which has a bearing on the exercise of administrative discretion regarding the waiver.

If the applicant fails to appear for a required interview (and USCIS received no request for rescheduling) or the applicant fails to respond to a request for information regarding such waiver, the application for adjustment of status must be denied for failure to prosecute.

(4) Adjudicator's Notes .

(A) Determining Case Status and Jurisdiction .

Because aliens affected by **Pub. L. 105-277** were in a variety of lawful and unlawful immigration statuses at the time of passage, you may encounter applications which fall within the jurisdiction of the Immigration Court or the Board of Immigration Appeals. Some applicants will not be in any sort of removal proceedings, others may be in proceedings, still others may have received a final order of removal which has not been executed. Before adjudication, determine the current status and jurisdiction. Jurisdiction rests with the Immigration Court (o r BIA) in any case where an OSC or NTA has been served on the Court and no final order (or order administratively closing the case) has been issued, or if a motion to reopen filed on or before May 11, 1999, is pending with the Court or BIA. If a final order has been issued, the proceedings have been administratively closed, or if action on any pending motion to reopen or reconsider (filed prior to May 11, 1999) has been continued indefinitely with the consent of USCIS or INS, jurisdiction rests with USCIS. Furthermore, if any pending motion to reopen was filed was filed on or after May 11, 1999, jurisdiction also rests with USCIS, since the implementing regulations provide that the Immigration Court only regains jurisdiction for HRIFA adjustment purposes if a motion to reopen proceedings is filed prior to the publication date of the regulation. Transfer out any application where the jurisdiction does not lie with USCIS and notify the applicant of the action. Some applicants may have an asylum application pending at an asylum office or have some other action pending. Once you determine the disposition of the HRIFA application, actions may be required to conclude other adjudicative procedures. In the event the HRIFA application is denied, follow-up actio n may be required to reinitiate other pending matters.

(B) Determining Eligibility: Nationality and Relationship .

Every HRIFA applicant and dependent must be a national of Haiti. Dependents of other nationalities do not qualify. Ordinarily, nationality is established by a birth certificate. Other documentation, such as a passport, is secondary evidence and may be accepted if primary evidence is unavailable. Evidence of dependent relationships must be established by birth or marriage certificates, divorce or adoption decrees, etc. (See AFM Appendix **23-3** regarding Haitian nationality law).

(C) Determining Eligibility: Classification as a Principal Applicant under HRIFA .

In order to be granted adjustment of status under HRIFA, the alien applying as a principal applicant must establish that he or she falls within one of the categories described in **section 902(b)(1)** of HRIFA:

- For those adjustment applicants who claim to have applied for asylum before either INS or EOIR prior to December 31, 1995, the INS or EOIR records are definitive. Because locating the INS or EOIR record may, in some cases, prove difficult, it is important that the applicant provide whatever information or document he or she can (such as a copy of the Form I-589 previously filed), especially in cases where the alien may have used a slightly different name.

- Likewise, for those adjustment applicants who claim to have been paroled into the United States prior to December 31, 1995, the INS record contained in the alien's file or in NIIS is definitive. As with cases based on asylum applications filed before December 31, 1995, any person claiming to have been paroled prior to December 31, 1995, should submit whatever documentation he or she has to that effect (such as a copy of the Form I-94) to assist in locating the proper record. It is important to remember th e distinction between being paroled into the United States under **section 212(d)(5)** of the Act, and being released from custody on a conditional parole under **section 236(a)(2)(B)** of the Act. As used in HRIFA **section 902(b))(1)(B)** , the term "parole" refers only to those aliens were paroled under **section 212(d)(5)** .

- For applicants seeking classification under one of the three categories for children, INS and EOIR records are unlikely to be definitive. In some cases, the INS record may show that the child was paroled into the United States as an unaccompanied minor and placed into appropriate foster care. In other cases, there may be no INS record of the child at all, let alone any record of his or her arrival as an unaccompanied minor or his or her being orphaned or abandoned. With regard to children, the statute do es not require any prior interaction between the child and INS. If the alien who is otherwise eligible under HRIFA can prove that he or she arrived in the United States (regardless of whether he or she was admitted, paroled, or entered without inspection) prior to December 31, 1995, that he or she was a child at the time of arrival and on December 31, 1995, and that he or she falls within one of the three subcategories for children set forth in **section 902(b)(1)(C)(i)** through **(iii)** of HRIFA, he or she may be granted adjustment. As in all such immigration proceedings, the burden of proof is on the applicant, but such burden can be met through the submission of satisfactory records from the appropriate Federal, State, or local court or child welfare agency. The records must have been created at the time the alleged event occurred and must be from a court or agency having jurisdiction over such matters where and when the alleged event occurred. With regard to orphaned and abandoned c hildren, remember that the event must have occurred while the applicant was still a child (i.e., under 21 years of age and unmarried). Also remember that in the case of an abandoned child, the abandonment must have occurred prior to April 1, 1998, and that the child must have remained

abandoned thereafter. However, an otherwise-eligible applicant could have either attained the age of 21 or married on or after January 1, 1996, or the date of orphanage or abandonment, whichever comes latest, and still qual ify for adjustment as a child under HRIFA.

(D) Determining Eligibility: Entry and Continuous Physical Presence .

Each HRIFA principal alien must demonstrate presence in the United States on December 31, 1995, continuing until the date on which adjustment of status is approved. Each unmarried son or daughter HRIFA applicant must demonstrate presence in the United States commencing not later than December 31, 1995, and continuing until the date on which adjustment of status is approved. Absences, with or without prior approval, totaling 180 days or less have no effect on eligibility. Furthermore, under certain circumstances, time outside the United States may be tolled and not count toward the 180-day maximum. Accordingly, the implementing regulations provide that:

- Travel pursuant to an advance parole authorization granted by INS or USCIS regardless of whether such travel exceeds 180 days, has no effect on eligibility.

- For an applicant who after December 31, 1998, departed from the United States without an advance parole, time spent outside the United States counts toward the 180-day cumulative time period.

- For an applicant who departed the United States between October 21, 1998, and December 31, 1998, time spent outside the United States on or after October 22, 1998, and prior to July 12,1999, does not count toward the 180-day cumulative time period. This provision was included in the regulations in order to allow otherwise-eligible individuals who were required to depart prior to the date of the field guidance on advance parole an opportunity to seek parole authorization from the Director of the NSC.

- Time spent outside the United States after the alien has submitted a request for parole into the United States for the purpose of filing an adjustment application under HRIFA and before the alien is actually paroled for such purpose, does not count toward the 180 day cumulative total.

Physical presence for HRIFA purposes may be established in any of several specific ways identified in paragraph (c)(1). HRIFA applicants must produce documentation which is verifiable, through INS records, the records of other government agencies including public schools, or (if the applicant is applying as a child) the records of a private or religious school he or she attended. Affidavits and other secondary evidence may be accepted in unusual circumstances, if primary

evidence is unavailable, only if such secondary evidence documents one or more of the specific actions enumerated in paragraph (c)(1) and which is conclusively verified by records. For example, an affidavit may be accepted which attests to the fact that an applicant was previously granted an employment authorization provided that records corroborate the issuance of that document. Documentation of continuous presence may be accepted from a wider range of sources than documentation of physical presence on 12/31/95. An interview is required in any case involving an applicant who has no prior record .

If file review indicates possible unexplained absence from the U.S. (e.g., a subsequent apprehension along the border, an application which was formally abandoned or other similar situation) the case should be referred to the appropriate local office for questioning and resolution.

Note

Departure from the United States after the filing of the application for adjustment constitutes an abandonment of the application for adjustment of status, unless the applicant applied for an advance parole prior to his or her departure, and INS or USCIS granted such advance parole request. Furthermore, the time spent outside the United States during an unauthorized absence counts toward the 180 day maximum allowed under the statute; this is likely to be significant if the alien either returns to the United States and files a new application for adjustment or files an I-131 seeking parole into the U.S. for the purpose of filing a new I-485 .

(E) Determining Eligibility: Inadmissibility . **[Chapter 23.13(d)(4)(E) updated 12-04-2006]**

The grounds of inadmissibility specified in the screening notes are inapplicable. See **Chapter 23.13(d)(2)(D)** above. Other grounds may be waived, on a case-by-case basis, provided eligibility exists pursuant to other provisions of the Act.

Waiver applications, with fee, may be filed and processed concurrently with a HRIFA adjustment application. All waiver cases must be referred for a personal interview to the local office having jurisdiction over the applicant's residence unless , in the case of an applicant who is seeking to adjust status as the dependent child of a HRIFA principal, the Service Center Director determines that applicant is clearly eligible for approval of an I-601 waiver of the applicable provision .

(F) Dependent Eligibility .

No dependent's application for adjustment may be approved until the adjustment application of the principal applicant has been approved. Dependents already present in the United States should be encouraged to submit their applications simultaneously with the principal applicant.

Note

If the dependent relationship is created after the principal's status is adjusted (e.g., through a marriage, birth or adoption which occurred subsequent to the adjustment), HRIFA dependent status is not permitted. In such situations, the principal would be required to submit an I-130 petition for his or her dependent, if the dependent is not able to qualify as a principal HRIFA applicant in his or her own right. Also note that unlike HRIFA principals, HRIFA dependents do not have a filing deadline.

(e) Case Closing Actions .

(1) Approval .

Endorse the approval block on the I-485 . If the case is being approved at the local office following an interview, endorse the "applicant interviewed" block on the application. Sign Form I-181 and endorse it with the correct adjustment code, office information and date of action. Because of the extensive Congressional reporting requirements contained in the HRIFA statute, if was necessary for INS to create a multiplicity of class codes in order to be able to capture the requisite information. It is extremely important that class of admission codes be applied properly and in accordance with this table:

COA	DESCRIPTION
HA6	Principal HRIFA adjustee under section 902(b)(1)(A) as an alien who applied for asylum prior to December 31, 1995
HA7	HRIFA spouse of a principal granted under section 902(b)(1)(A)
HA8	HRIFA child of a principal granted under section 902(b)(1)(A)
HA9	HRIFA unmarried son/daughter of a principal granted under section 902(b)(1)(A)
HB6	Principal HRIFA adjustee under section 902(b)(1)(B) as an alien who was paroled into the U.S. prior to December 31, 1995
HB7	HRIFA spouse of a principal granted under section 902(b)(1)(B)
HB8	HRIFA child of a principal granted under section 902(b)(1)(B)
HB9	

	HRIFA unmarried son/daughter of a principal granted under section 902(b)(1)(B)
HC6	Principal HRIFA adjustee under section 902(b)(1)(C)(i) as a child who arrived without parents in the U.S.
HC7	HRIFA spouse of a principal granted under section 902(b)(1)(C)(i)
HC8	HRIFA child of a principal granted under section 902(b)(1)(C)(i)
HC9	HRIFA unmarried son/daughter of a principal granted under section 902(b)(1)(C)(i)
HD6	Principal HRIFA adjustee under section 902(b)(1)(C)(ii) as a child who was orphaned subsequent to arrival in the U.S.
HD7	HRIFA spouse of a principal granted under section 902(b)(1)(C)(ii)
HD8	HRIFA child of a principal granted under section 902(b)(1)(C)(ii)
HD9	HRIFA unmarried son/daughter of a principal granted under section 902(b)(1)(C)(ii)
HE6	Principal HRIFA adjustee under section 902(b)(1)(C)(iii) as a child who was abandoned subsequent to arrival and prior to April 1, 1998
HE7	HRIFA spouse of a principal granted under section 902(b)(1)(C)(iii)
HE8	HRIFA child of a principal granted under section 902(b)(1)(C)(iii)
HE9	HRIFA unmarried son/daughter of a principal granted under section 902(b)(1)(C)(iii)

Note

In some cases, the applicant may have applied under one category, but the adjudicating officer may find that he or she is more appropriately classified under another. In such cases, the adjudicating officer should approve the application under the more appropriate classification. For example, a child who was paroled into the United States, may have applied for adjustment of status claiming to be an orphan (classification HD-6), but be unable to provide evidence of the death of his or her parents. If the records clearly show that the parole took place before December 31, 1995, and the alien is otherwise eligible for adjustment under HRIFA, approve the application under classification HB-6. Furthermore, in some cases, the code that the adjudicating officer determines is appropriate will differ from the one that was indicated at the time of initial data entry by the employee of the contractor. It is the responsibility of the adjudicating officer to ensure that the correct code is assigned at the time of cas e approval.

(A) Upon approval at the NSC:

- Update CLAIMS, thereby ordering the approval notices and production of the alien registration card (Form I-551), and entering new data into the Central Index System;

- If the file contains an unadjudicated asylum application, offer the alien the opportunity to withdraw that application by sending him or her a letter of withdrawal which can be signed and brought to the local office when he or she appears for ADIT processing (the local office person handling the I-551 processing should place the resulting withdrawal letter in the file and notify the appropriate asylum office so that the RAPS record may be updated); and

- If there is no other action pending, route the file to the file room for storage. If other action is pending, ensure that appropriate steps are taken.

(B) Upon approval at a local office:

- Advise the applicant of the decision (in person if the application is approved during the interview, by mail if it is approved afterwards);

- Process the applicant for an I-551;

- Endorse the passport with the "Processed for I-551 stamp" or issue a temporary I-551;

- If the file contains an unadjudicated asylum application, offer the alien the opportunity to withdraw that application. Place the resulting withdrawal letter in the file and notify the appropriate asylum office so that the RAPS record may be updated; and

- If there is no other action pending (such as an application or petition to be adjudicated, Deportation Docket Control to be cleared, or lookout to be updated), route the file to the NSC for USCIS and CLAIMS updates and I-551 production. If such other action is required, ensure that such action is taken and then route the file to the NSC.

(2) Denial .

If a HRIFA adjustment application is denied, prepare a denial notice setting forth the specific basis for the adverse action. The denial notice may be served by personal service in accordance with **8 CFR 103.5a(a)(2)** . As with section 245 adjustment cases, HRIFA decisions are not

appealable. The Immigration Court has jurisdiction to reconsider HRIFA eligibility during the course of a removal hearing. If the alien is:

- Already subject to a final order of removal, certify the case for review by the immigration judge, as described in paragraph (4), below.

- Not already in removal proceedings, but the application is denied and the alien is not maintaining status, institute removal proceedings.

- In removal proceedings which were administratively closed, or if a motion to reopen or reconsider was continued indefinitely with INS or USCIS consent, notify district counsel so that the removal proceedings may be recalendared or action on the motion may be reinstated.

- Notify the NSC of the decision so that the CLAIMS record may be updated.

(3) Supervisory Review .

HRIFA decisions are subject to the same review and quality assurance procedures as other adjustment of status cases. Follow local procedures for such review.

(4) Appeals and Certifications .

If a HRIFA adjustment cases is filed with, and denied by, INS or USCIS after the alien has been ordered removed by an immigration judge in proceedings in Immigration Court, certify the adverse decision for review to the Immigration Court which ordered the removal, in accordance with **8 CFR 245.15(r)(3)** . It is not necessary to certify denied cases where the alien has not been ordered removed, since the immigration judge has authority to reconsider HRIFA eligibility, along with other forms of relief, during the course of the removal proceedings. In the unlikely event that a HRIFA application is denied and the alien is maintaining valid non-immigrant status, certify the decision to the Administrative Appeals Office in accordance with **8 CFR 103.4(a)(4)** .

(5) Feedback to NSC .

For any applications adjudicated at the local office, and especially those which are denied, the adjudicator should review the case to determine whether there is any information which should be relayed to the NSC to assist that office in determining which cases should be interviewed. Such information should be directed to "NSC HRIFA I-485 POC" as a memo attached to the file or by e-Mail.

(f) Ancillary Applications . (Chapter 23.13(f); Revised 06/06/2005)

(1) Waivers. **[Chapter 23.13(f)(1) updated 12-04-2006]** Various immigrant waivers are available to HRIFA applicants on a case-by-case basis. Waivers may be filed concurrently with the application for adjustment or may be filed later, if an inadmissibility ground is identified subsequent to initial filing. Adjudication of a waiver should be completed in the local office at the time of interview, unless in the case of an applicant who is seeking to adjust as the dependent child of a HRIFA principal, the Service Center Director determines that applicant is clearl y eligible for approval of the waiver and approves the Form I-601 .

(2) Advance Parole: Alien Present in U.S. at Time of Request. The Nebraska Service Center Director is delegated authority to authorize advance parole of aliens whose properly filed applications for adjustment under HRIFA are pending at the Nebraska Service Center, except those cases in which a final order has been issued. In any case where the alien is determined to be in removal proceedings, do not adjudicate the parole request, transfer the HRIFA application to the appropriate Immigration Court and the parole request to the local office. If the alien is not in proceedings, adjudicate the parole request, granting parole for the amount of time required for any legitimate business or personal reason. If the alien is the subject of a final order, the local office should contact the Parole and Humanitarian Assistance Branch, Office of International Affairs, Immigration and Customs Enforcement Office in Headquarters regarding any parole request.

Parole and Humanitarian Assistance Branch has the authority to provide an advance parole to a HRIFA applicant who is in court proceedings as well as one who has received a final order for court proceedings.

Immigration Fairness Act, Pub. L. 105-277 (HRIFA).
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