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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FEB 28 2003

FILE:  Office: Miami (Riviera Beach) Date:

IN RE: Applicant: 

APPLICATION: Application for Adjustment of Status Pursuant to Section 902 of the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), Public Law 105-277.

IN BEHALF OF APPLICANT:


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The case will be remanded to the acting district director for further action.

The applicant is a native and citizen of Haiti who is seeking adjustment of status to that of a lawful permanent resident pursuant to section 902 of Public Law 105-277, Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

The acting district director determined that the applicant was ineligible for adjustment of status under the HRIFA Act because he had not met the burden of having filed an asylum application or having received a parole issued under section 212(d)(5) prior to December 31, 1995. The acting district director, therefore, denied the application.

The applicant appealed the notice of certification. He asserts that he was paroled into the United States when he was released from the Krome Detention Center on May 26, 1994. He submits a copy of Form G-639, Freedom of Information/Privacy Act Request, dated September 19, 2002.

8 C.F.R. § 245.15 states, in pertinent part:

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

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

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

(ii) An alien who was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in public interest; or

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

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

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

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

The record reflects that the applicant entered the United States without inspection on May 3, 1994. He was detained by the Service and placed in removal proceedings under section 240 of the Act. He was subsequently transferred to the Krome Detention Center. On July 16, 1996, the applicant was paroled into the United States, pursuant to section 212(d)(5) of the Act, pending exclusion hearing. On July 22, 1997, the applicant filed an Application for Asylum and for Withholding of Deportation.

The Service record contains a copy of the Service computer listing of the "Custody Summary Inquiry" reflecting that the applicant was released from the Krome Detention Center on May 26, 1994, and that he was paroled upon his release.

The case will, therefore, be remanded to the acting district director so that he may review the record of proceeding and determine if the applicant was, in fact, paroled into the United States on May 26, 1994, as the applicant had claimed and as reflected on the Custody Summary Inquiry and other documents in the record. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review, and without fee.

ORDER: The acting district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.