



47

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy



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

FILE:



Office: Atlanta

Date:

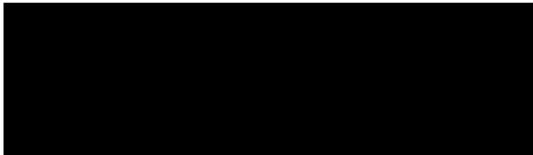
FEB 28 2003

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:



PUBLIC COPY

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

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 district director determined that the applicant was ineligible for adjustment of status under the HRIFA Act because her application was untimely filed. The district director, therefore, denied the application.

On appeal, counsel asserts that through no fault of the applicant, the application was filed six weeks later than she believed it would be, and thus was ruled late filing when the check consequently was returned for insufficient funds, in spite of immediate efforts to correct the error. Counsel explains that the applicant met with an accredited representative at Catholic Social Service on February 10, 2000, over a month and a half before the HRIFA filing deadline. Unfortunately, in spite of noting that the application was ready to file, Catholic Social Services did not mail the application to the Service Center until March 24, 2000, six weeks after the applicant provided her check for filing fees. Counsel states that the applicant had every reason to expect that her application would be timely filed once it was completed, and it was through fault of Catholic Social Services, and not through any fault of the applicant, that the filing was not timely, consequently resulting in an insufficiency of funds to cover the check.

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

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

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

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section....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....

8 C.F.R. 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as properly filed when so stamped, it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable **will not retain a filing date.**

Emphasis added. As provided by 8 C.F.R. 245.15(c)(2)(i), the application must be received not later than March 31, 2000, at the Nebraska Service Center, the Board, or the Immigration Court having jurisdiction. The record reflects that the application was received by the Service Center on March 29, 2000. The applicant's check, used to pay the filing fee, was subsequently returned to the Service as non-payable. On May 16, 2000, the applicant was requested to send a replacement money order or certified check within 30 days in order to continue the processing of her application. While counsel states that it was through the fault of Catholic Social Services, and not through any fault of the applicant, that the filing was not timely, consequently resulting in an insufficiency of funds to cover the check, the Service is not responsible for the inaction of the applicant's representative.

The applicant claims she purchased a money order on May 26, 2000, and that the Service received the payment on June 5, 2000; therefore, she timely sent payment for her application within the 30 days specified. As provided by 8 C.F.R. 103.2(a)(7)(i), the filing date of March 24, 2000 was not retained when the applicant's filing fee was subsequently returned as non-payable. As the application was not properly filed with the Service until June 5, 2000, the applicant is not eligible for adjustment of status under section 902 of HRIFA.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. Therefore, the decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.