

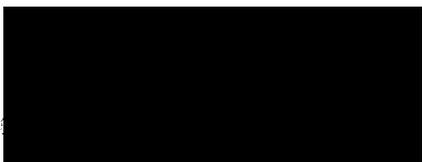


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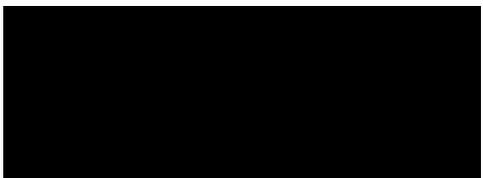


FILE: [Redacted] Office: MIAMI, FLORIDA Date: OCT 07 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 902 of the Haitian Refugee Immigration Fairness Act of 1998.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 (AAO) for review. The Acting District Director's decision will be affirmed.

The applicant was born in the Bahamas and filed an application for adjustment of status to that of a lawful permanent resident under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), section 902 as it pertains to Haitian adjustment applicants.

The Acting District Director denied the application after determining that the applicant was not eligible for adjustment of status under HRIFA because he failed to establish that he is a national of Haiti and failed to establish that he was orphaned or abandoned by his parents. *See Acting District Director's Decision* dated August 22, 2003.

Section 902 of HRIFA provides, in part:

(b) Aliens eligible for adjustment of status -- The benefits provided by subsection (a) shall apply to any alien who is a national of Haiti who

(1) was present in the United States on December 31, 1995, who

(A) filed for asylum before December 31, 1995,

(B) 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 the public interest, or

(C) was a child (as defined in the text above subparagraph (A) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) at the time of arrival in the United States and on December 31, 1995, and who--

(i) arrived in the United States without parents in the United States and has remained without parents in the United States since such arrival,

(ii) became orphaned subsequent to arrival in the United States, or

(iii) was abandoned by parents or guardians prior to April 1, 1998 and has remained abandoned since such abandonment; and

(2) has 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 such adjustment is filed.. .

In order to be eligible for adjustment of status under HRIFA the applicant must first establish his nationality and then establish that he was orphaned or abandoned by his parents.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting District Director's findings. In response to the notice of certification, counsel submits a brief, copies of the Haitian Constitution, copies of the applicant's mother's passport, and affidavits from the applicant's mother, uncle, and cousin. In addition counsel submits documentation detailing counsel's efforts to obtain primary evidence from the Government of the Bahamas and the Haitian Consulate in Miami regarding the applicant's birth.

Counsel asserts that the applicant's mother, [REDACTED] was born in Haiti. To support her assertion counsel submits a copy of [REDACTED] passport. The passport shows that [REDACTED] was born in Haiti. In addition the record of proceedings reveals that the applicant entered the United States on April 19, 1982, with his mother [REDACTED] adjusted her status to that of a Lawful Permanent Resident under HRIFA using her father's last name [REDACTED]

The regulations allows the Service 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. The Department of State's Foreign Affairs Manual (FAM) reports that birth certificates are generally available in the Bahamas. The FAM further states that although birth records have been maintained in the Bahamas since 1850, there is no law requiring that births must be reported. In most cases the person is able to obtain a birth certificate.

In the present case counsel submits a letter from the Bahamas Registrars office indicating that there is no record of the applicant's birth. Counsel submits affidavits from the applicant's mother, uncle and cousin and copies of letters addressed to Bahamian and Haitian authorities in an effort to obtain a birth certificate for the applicant. The affidavits state that the applicant was born on May 30, 1980, in Nassau, Bahamas but his birth was not registered with the Bahamian authorities since he was born at home and not in a hospital. Furthermore counsel provides an affidavit from [REDACTED] explaining the use of her two names and the issue of why one of her affidavits states that the applicant was born on May 3, 1980 instead of May 30, 1980.

Counsel's explanation regarding the use of two names by the applicant's mother and the discrepancy in the affidavit with the different date of birth for the applicant appears credible.

Based on the secondary evidence and the affidavits submitted the AAO accepts the fact that the applicant was born on May 30, 1980, in Nassau, Bahamas to [REDACTED] a Haitian national.

Article 11 of the 1987 Haitian Constitution reads:

All person born of a Haitian father or Haitian mother - who are themselves native-born Haitians and have never renounced their nationality possess Haitian nationality at the time of birth.

Based on the Article 11 of the 1987 Haitian Constitution and evidence that the applicant's mother was born in Haiti, it is concluded that the applicant has established that he is a national of Haiti.

Although the applicant has proven that he is a Haitian national he is not eligible to adjust his status under section 902 of HRIFA because he has not established that he was orphaned or abandoned by his parents.

Counsel asserts that the applicant was abandoned by his mother and became a ward of the state when he was placed in foster care.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(B)(1)(f), defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

Eligibility in this matter revolves around the issue of abandonment. The term is not defined in the Act. However it has been found to exist only where the repudiation of the beneficiaries as children of the family is complete to the point where they are as completely orphaned by abandonment as are those children orphaned by the death of both parents. See *Matter of Del Conte*, 10 I&N Dec. 761 (District Director 1964). The severance of ties between parent and child must be total, with no communication between parent and child, no financial contributions by the parents towards the child's sustenance, and no arrangements made by the parents for their support. In short, there must be no continuing interest in the child whatever. Short of such a complete termination of all ties, the condition of abandonment does not exist.

Black's Law Dictionary (5th ed. 1979) states the term "to abandon" means:

To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest ... To give up absolutely; to forsake entirely; to renounce utterly; ... to desert. It includes the intention, and also the external act by which it is carried into effect.

In a case where a child is a ward of the court, the parent must have exhibited a refusal to meet the natural and legal obligations for care and support of the child and a determination to forego all parental claims to the child. On the other hand, if the parents have been deprived of custody only temporarily, and they are being given an opportunity to care for the child properly, the child would not be considered an orphan.

The record reveals that on January 8, 1998, the applicant was placed in foster care by the Circuit Court for the Ninth Judicial Circuit in and for Orange County, Florida, due to abuse by his mother. On April 16, 1998, the mother was granted supervised visitations with the applicant and on May 12, 1998, after a motion of change of placement submitted by [REDACTED] she was allowed unsupervised visits with the applicant.

The evidence submitted with the appeal has been carefully considered, but does not support counsel's assertion of abandonment. The absence of evidence such as a court's finding of abandonment supports such a finding. Counsel has not demonstrated that the applicant's mother has severed all ties with the applicant to the point where he is as orphaned by abandonment as is a child orphaned by the death of both parents.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to meet that burden. Accordingly, the decision of the Acting District Director to deny the application will be affirmed.

**ORDER:** The Acting District Director's decision is affirmed.