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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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File: [Redacted]

Office: PHILADELPHIA, PA

Date:

FEB 05 2010

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IN RE:

Applicant: [Redacted]

Application: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Public Law 105-277, Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant is a native and citizen of Haiti who filed this application for adjustment of status to that of a lawful permanent resident under Public Law 105-277, Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), and the implementing regulations at 8 C.F.R. § 204.15. On November 4, 2009, the director certified to the AAO a decision to deny the application that the director had originally issued to the applicant on December 29, 2008. Although the director informed the applicant that he may submit any additional evidence to the AAO, as of this date, no evidence to supplement the record has been received. We, therefore, consider the record complete and ready for adjudication.

A review of the record reveals the following pertinent facts and procedural issues: The applicant is a native and citizen of Haiti who claims to have entered the United States in 1994 without inspection. The applicant subsequently filed an application for asylum and withholding of removal that was referred to the immigrant court. On January 2, 1998, an immigration judge ordered the applicant removed to Haiti *in absentia*. On November 18, 1999, the applicant filed a Form I-485 application to adjust status based upon HRIFA. On August 20, 2008, the director denied the applicant's adjustment application, and then affirmed that decision in a December 29, 2008 denial that was issued because the August 2008 decision contained incorrect information. On November 4, 2009, the director certified her denial decision to the AAO for review.

The regulations at 8 C.F.R. § 245.15 state, in pertinent part:

(r) Review of decisions by the Service denying HRIFA applications.

(3) Aliens with final orders. In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, the Service shall refer the decision to deny the application by filing a Notice of Certification (Form I-290C) with the Immigration Court that issued the final order for consideration in accordance with paragraph (s) of this section.

The AAO is withdrawing the director's December 29, 2008 decision and subsequent certification because the Form I-290C that the director certified to the AAO should have been filed with the immigration court, as the applicant has an outstanding order of removal from January 2, 1998.

ORDER: The director's decision is withdrawn. The director shall issue a new notice of denial and shall then prepare a new Form I-290C and serve it on the immigration court.