

INTERIM MEMO FOR COMMENT

Posted: 01-03-2011
Comment Period Ends: 01-14-2011
This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

December 21, 2010

PM-602-0020

Policy Memorandum

SUBJECT: Implementation of the Help HAITI Act of 2010

Purpose

This memorandum provides guidance to USCIS Field Operations Directorate (FOD) personnel on the vital aspects of processing applications for adjustment of status filed under the *Help Haitian Adoptees Immediately to Integrate Act of 2010*, also known as the Help HAITI Act of 2010.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority

Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Public Law 111-293, 124 Stat. 3175 (2010).

Background

On January 12, 2010, a massive earthquake struck Haiti, causing widespread loss of life, injuries, devastating damage to infrastructure (including orphanages and government buildings), and the temporary collapse of the Haitian government.

On January 18, 2010, the Secretary of the Department of Homeland Security announced a special humanitarian parole policy for certain Haitian orphans who were adopted or in the process of being adopted by US citizens. Requests for humanitarian parole under this program were accepted through April 14, 2010. This special program and the steps taken to allow these orphans to obtain Lawful Permanent Resident (LPR) status and citizenship are collectively referred to as the Haitian Orphan Parole Program (HOPP).

Many HOPP parolees may be eligible to complete the immigration process through normal procedures under the Immigration and Nationality Act (Act) based on intercountry adoption. However, since some parents have not been able to complete adoptions in Haiti and some children may have already aged out, not all HOPP parolees are eligible under the normal procedures of the Act.

On December 9, 2010, President Obama signed the Help HAITI Act of 2010 into law. This Act authorizes the Secretary of the Department of Homeland Security to adjust HOPP parolees who

are physically present in the United States to LPR status. Applications for adjustment under this Act may be filed at any time on or before December 9, 2013.

Policy

The Help HAITI Act took effect on December 9, 2010, the date of enactment. This Policy Memorandum applies to the adjudication of any applications for adjustment of status filed under this law.

Filing Requirements

Applicants filing for adjustment pursuant to the Help HAITI Act will be instructed to file Form I-485, Application to Register Permanent Residence or Adjust Status, by noting "Help HAITI Act" in Part 2(h): Other basis for eligibility. The Form I-485 will be submitted to the Phoenix Lockbox. Because the Help HAITI Act does not make a HOPP Parolee exempt from public charge inadmissibility, USCIS cannot waive the filing fee. 8 CFR 103.7(c)(4).

Applications may be filed until December 9, 2013. Applications received on or before December 9, 2013, will be deemed timely filed. An application received on or after December 10, 2013, will be rejected as untimely and the application and filing fee returned to the applicant.

Applicants must also submit a Form I-693, Report of Medical Examination and Vaccination Record, completed by a designated civil surgeon.

Because aliens adjusting under the Help HAITI Act are not actually adjusting as "immediate relatives," a Form I-864 Affidavit of Support is not required. If there is reason to believe an applicant may become a public charge, USCIS may request a Form I-134 Affidavit of Support from a suitable sponsor.

Adjudication

The National Benefits Center (NBC) will adjudicate Help HAITI Act cases. NBC will, as permitted by 8 CFR 245.19(a), exercise the discretion to determine whether to waive the applicant's interview. If NBC determines that an interview is needed, NBC will transfer the application to the appropriate field office. The application will be adjudicated according to the following steps:

1. Verify that the applicant was paroled pursuant to the HOPP.
 - Officers will refer to the applicant's Form I-94 Departure Record, Boarding Letter issued in Haiti, and A-file to verify HOPP eligibility.
2. All applicants will follow the standard requirement for biometric capture at an Application Support Center (ASC).
3. Applicants who are age 14 years and older at the time of adjudication will require definitive response and resolution of the following security checks:
 - IBIS;
 - FBI Namecheck; and
 - FBI fingerprint check.

4. Verify that the applicant is physically present in the United States when they file their application and also on the date of adjudication.
 - To support compliance with the physical presence requirement, officers may use the record of the applicant's parole into the United States, the U.S. residence mailing address listed on the Form I-485, or the applicant's appearance at the ASC for biometric capture.
 - If, on the date of decision, the officer knows the applicant is not physically present in the United States, the officer may properly defer adjudication until the applicant has returned.
 - A HOPP parolee, after parole, may have travelled abroad to live with his or her adoptive parent(s). The Help HAITI Act does *not* provide for issuance of immigrant visas. As has long been customary in naturalization cases under section 322 of the Act, NBC may properly coordinate with the adoptive parent(s), a guardian, or other appropriate person, to arrange the expedited filing and adjudication of an adjustment application while the HOPP parolee is physically present in the United States.
5. Verify that the applicant is admissible to the United States.
 - The Help HAITI Act waives inadmissibility under section 212(a)(7)(A) of the Act (immigrant without immigrant visa). No other grounds of inadmissibility are waived.
6. Record the Decision.
 - If the application is approved, the office will order the permanent resident card.
 - The Class of Admission (COA) code for cases adjusted under this law will be HH6.
 - The Help HAITI Act caps the number of individuals who may adjust under this law at 1,400. The NBC will monitor compliance with the statutory cap.
 - If the application is denied, the office will send a written denial notice to the applicant. There is no administrative appeal from a denial of a Help HAITI Act application. However, a Motion to Reopen or Reconsider may be filed in accordance with 8 CFR103.5.

Notes

- If the parolee wishes to leave the United States during the pendency of his or her application, the parolee must apply for advance parole to avoid abandoning the application.
- The birth parents of individuals adopted under this law cannot derive any benefit under the INA if it is based on such parentage.
- For purposes of section 320 and 322 of the Act, section 2(e) of the Help HAITI Act provides that a HOPP parolee, once adjusted, will be deemed to meet the definition of "child" under INA § 101(b)(1) if he or she is unmarried and if, before the parolee's 18th birthday: (i) the parolee obtains adjustment under the Help HAITI Act and (ii) a U.S. citizen adopts the parolee. It does not matter whether the adoption occurs before, on, or after the date of the grant of adjustment. Children who are eligible for citizenship under sections 320 or 322 may obtain a Certificate of Citizenship by filing Form N-600, with fee.

- If a HOPP parolee is the beneficiary of an approved Form I-600 or Form I-130, the enactment of the Help HAITI Act does *not* mean that that an eligible HOPP parolee can no longer seek adjustment under section 245 of the Act, if the HOPP parolee is eligible under section 245.

Implementation

The A-files associated with this program have been centralized at the NBC where there is a cadre of officers and support staff familiar with the particulars of the HOPP population. NBC will, as permitted by 8 CFR 245.19(a), exercise the discretion to determine whether to waive the applicant's interview. If NBC determines that an interview is needed, NBC will transfer the application to the appropriate field office.

Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudication of applications for adjustment of status. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions regarding this memorandum and USCIS policy regarding the Help HAITI Act of 2010 should be addressed through appropriate channels to the Headquarters Field Operations Directorate, Adoptions and Humanitarian Branch.