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The Haitian Refugee Immigration Fairness Act

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Piper, Tonya, "The Haitian Refugee Immigration Fairness Act" (2005). *College of Law Library Student-Authored Works.* Paper 9.
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Research Guides

The Haitian Refugee Immigration Fairness Act

Guide Information

Last Updated: Oct 29, 2010
Guide URL: http://libguides.law.gsu.edu/haitianrefugeefairnessact
Description: The Haitian Refugee Immigration Fairness Act
Tags: immigration
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Topic Overview

Advocacy organizations disappointed that Haitians were not one of the groups benefiting from the Nicaraguan Adjustment and Central American Relief Act put tremendous pressure on Congress to pass some type of benefit for Haitian refugees living in the US. They were successful in 1998 when Congress passed the Haitian Refugee Immigration Fairness Act.

The Haitian Refugee Immigration Fairness Act (HRIFA) was signed into law on October 21, 1998. To implement this act, the United States Citizenship and Immigration Services (USCIS) established procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents.

The federal regulation provides that an alien may adjust his status pursuant to HRIFA, if (1)he has been present in the United States since December 31, 1995; (2) has maintained continuous physical presence since that date; (3) is admissible to the United States under all provisions of section 212(a) of the Act, other than those specifically excepted by HRIFA; and (4) falls within one of five classes of persons enumerated in 8 C.F.R. § 1245.15(b)(1), which includes a Haitian national who has filed an application for asylum prior to December 31, 1995, or who was paroled into the United States prior to December 31, 1995.

About the Author

Tonya Piper - Fall 2005 - Immigration

Scope

This website is designed to assist in locating comprehensive information on the Haitian Refugee Immigration Fairness Act (HRIFA). The site is designed to aid the researcher in a basic understanding of the particular issues facing Haitian immigrates and the specific problems the legislation has attempted to correct.

There are four main parts to this website. Part I provides a brief overview of the topic. Part II identifies primary sources, including the U.S. Constitution, federal statues, federal cases, administrative legislation and legislative history. Part III provides secondary sources that include articles from law reviews and journals, publications from the American Law Reports (ALR), books, treatises, and practice materials. Parts IV and V supply a wide range of internet search tools including both legal and non-legal websites as well as information on applicable interest groups and associations.

Disclaimer

Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

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Primary Sources

Primary Sources

Primary sources are used to research the status of the law. These sources include cases, statutes, regulations, and decisions of administrative bodies.

A. Constitutional Provision

Provisions of the U.S. Constitution can be accessed for free through Findlaw, as well as Cornell's Legal Information Institute (LII) and FirstGov.

U.S. CONST. art. I, § 8 - *Congress shall have the power . . . To establish a uniform Rule of Naturalization*. From this language courts have articulated the "plenary power doctrine," which establishes that Congress has complete authority over immigration matters.

B. Federal Statutes

Hard copies of Federal Statutes may be found in the law library [Unites States Code (U.S.C.); United States Code Annotated (U.S.C.A.); and the United States Code Service (U.S.C.S.)]. The U.S. Code is also provided online at no charge through Findlaw and Cornell's Legal Information Institute (LII).

8 U.S.C. §1255	Adjustment of Status of nonimmigrant to that of person admitted for permanent residence. This section specifically identifies Haitian immigrates as potentially eligible to be adjusted by the Attorney General and lays out the procedures for applying for an adjustment of status as well as the eligibility requirements and the specific limitations.
8 U.S.C. §1255a	Adjustment of Status of certain entrants before January 1, 1982, to that of person admitted for lawful residence. Provides that an immigrant receiving an designation of Haitian Entrant as of Nov. 6, 1986 or who was a national of Haiti arriving before Jan. 1, 1982, could be lawfully adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence if application was made within two years of Nov. 6, 1986.

C. Cases

Most cases dealing with adjustment of status will be handled through the administrative process and not subject to judicial review. Administrative proceedings are usually unpublished and should not be cited however, many of these proceedings may be located at no charge through the Department of Justice. {Note: some proceedings have been subject to judicial review on other grounds}. Federal and State court opinions can be located using commercial reporters in the law library which can sometimes be time consuming but avoids cost. Other free online resources are Findlaw, the U.S. Supreme Court website (Supreme Court opinions) and Cornell's Legal Information Institute (LII). Court opinions can also be located through LoisLaw as well as Lexis and Westlaw for a fee.

Cantave v. Farquharson, Civil No. 3:01cv1787, 2002 U.S. Dist. LEXIS 27337 (Conn. Dist. Ct. Apr. 17, 2002).

The petitioner submitted an application for an adjustment of status under the Haitian Refugee Immigration Fairness Act (HRIFA). The INS rejected the application as untimely. The petitioner was later convicted of attempted sexual assault in a spousal or cohabiting relationship. The INS initiated removal proceedings for the alien's criminal conviction. The Board of Immigration Appeals (BIA) concluded that petitioner did not establish his eligibility for a waiver thus was ineligible, based on his conviction, to apply for an adjustment of status under HRIFA. The petitioner appealed on grounds of violation of due process.

Held: A fact-based inquiry or review of the discretionary decision regarding the timeliness of his HRIFA application and whether he was entitled to a waiver of removal was not a part of habeas review and therefore did not violate due process.

Bernadin v. I.N.S., No. 01 MISC 153, 2002 U.S. Dist. LEXIS 8766 (E.D.N.Y. Apr. 22, 2002).

Plaintiff re-filed an application for an adjustment of status to that of a lawful permanent resident alien pursuant to the Haitian Refugee Immigration Fairness Act (HRIFA). The defendant agency rejected the application as untimely. The plaintiff filed a "Notice of Motion" asking the court to require the agency to accept his application. The agency moved to dismiss the action for lack of jurisdiction.

Held: The "Notice of Motion" was insufficient; the plaintiff was required to file a complaint to seek relief from the agency's actions, and the court would not construe the "Notice of Motion" as a complaint.

D. Administrative Regulations

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. CFR's can be located at no charge in the law library as well as through GPO Access.

8 C.F.R. § 245.15 (2005) Department of Homeland Security
Adjustment of Status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

8 C.F.R. § 1245.15 (2005)	Executive Office of Immigration Review, Department of Justice
	Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

E. Legislative History

Federal legislative histories are compiled documents that precede the passing of a public law and may include related committee reports, earlier texts of the bill, and the history of the bill's development. Legislative history is generally used to determine the congressional intent of a statute. Already compiled legislative histories can be located in the law library through Sources of Compiled Legislative Histories by Nancy Johnson or through LexisNexis Congressional (CIS) or Westlaw (USCCAN) for a fee. Legislative history and public laws can also be obtained free of charge using Thomas or GPO Access.

Pub. L. No. 105-277, 112 Stat. 2681 H.R. 4328, 105th Cong. (1998)	Title IX: Haitian Refugee Immigration Fairness Act of 1998 Provides for the permanent resident status adjustment of certain Haitian nationals (and their spouses and children) who were paroled into the United States or filed for amnesty before December 31, 1995. Adjustment applications are required to be filed before April 1, 2000. (Sec. 902) Set forth stay of removal procedures and work authorization provisions, as well as restricts judicial appeal or review of any administrative determination. (Sec. 903) Requires the Attorney General to collect and make available to the public certain data on detained asylum seekers and other aliens, including criminal aliens.
Pub. L. No. 106-386, 114 Stat. 1532 H.R.3244, 106th Cong. (2000)	Amendment Sec. 1508 - Grants battered spouses and children access to the Haitian Refugee Fairness Act of 1998.
H.R. 3658, 109th Cong. (2005)	HRIFA Improvement Act of 2005 Amends the Haitian Refugee Immigration Fairness Act of 1998 to: (1) include document fraud among the grounds of inadmissibility which shall not preclude an otherwise qualifying Haitian alien from permanent resident status adjustment; and (2) provide that determinations with respect to children shall be made using the age of an individual as of the date of enactment of this Act. Permits new status adjustment applications to be filed for a limited time period. Directs the Secretary of Homeland Security to establish procedures for reopening status adjustment applications based upon the amendments made by this Act. Latest Major Action: 9/19/2005 Status: Referred to the Subcommittee on Immigration, Border Security, and Claims.
S. 3006, 108th Cong. (2004)	HRIFA Improvement Act of 2004 Amends the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) to require determinations regarding derivative status for the children of qualifying Haitians to be made using the age of the child as of October 21, 1998. Authorizes parents or guardians of children seeking derivative status to file an adjustment application on the child's behalf if the child is physically present in the United States on the date of filing. Authorizes the Secretary of Homeland Security or the Attorney General to waive grounds of inadmissibility not specified in HRIFA for humanitarian purposes, to assure family unity, or when otherwise in the public interest, with the exception of those grounds related to controlled substances trafficking and certain security and related matters. Permits qualifying Haitians seeking benefits pursuant to this Act to file new status adjustment applications and motions to reopen. Extends to those who file the same

	protection from exclusion, deportation, removal, or enforcement of a voluntary departure order as currently applies to HRIFA beneficiaries. Latest Major Action: 11/18/2004 Status: Read twice and referred to the Committee on the Judiciary.
H.R. 3238, 108th Cong. (2003)	HRIFA Improvement Act of 2003 Amends the Haitian Refugee Immigration Fairness Act of 1998 to: (1) include document fraud among the grounds of inadmissibility which shall not preclude an otherwise qualifying Haitian alien from permanent resident status adjustment; and (2) provide that determinations with respect to children shall be made using the age of an individual as of the date of enactment of this Act. Permits new status adjustment applications to be filed for a limited time period. Directs the Secretary of Homeland Security to establish procedures for reopening status adjustment applications based upon the amendments made by this Act. Latest Major Action: 10/22/2003 Status: Referred to the Subcommittee on Immigration, Border Security, and Claims.
66 Fed. Reg. 29,449 (May 31, 2001)(to be codified at 8 C.F.R. pt. 245).	Section 245.15 is amended by : a. Revising the sentence in the introductory text in paragraph (b); b. Adding a new paragraph (e)(3); c. Redesignating paragraphs (g)(3)(i) and (g)(3)(ii) as paragraphs (g)(3)(iii) and (g)(3)(iv), respectively; d. Redesignating the introductory text of paragraph (g)(3) as paragraph (g)(3)(i); e. Adding new paragraph (g)(3)(ii); f. Designating existing text in paragraph (r)(1) as paragraph (r)(1)(i); g. Adding a new paragraph (r)(1)(ii); h. Adding a new paragraph (r)(4); i. Removing the word "or" at the end of paragraph (s)(4)(i); j. Removing the period at the end of paragraph (s)(4)(ii), and inserting a "; or" in its place; and by k. Adding a new paragraph (s)(4)(iii).

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Secondary Sources

Secondary Sources

Secondary sources are used to explain the law and assist in locating primary authority. These sources include law review articles, scholarly treatises, bar journals, encyclopedias and practitioner books.

A. American Law Reports (ALR)

The A.L.R. is a great place to begin research because they provide introductory overviews on legal topics, usually explaining the current state of the law, the development of the body of law, relevant legal principles, as well as citations to primary law such as statutes, cases, and regulations. A.L.R.'s can be easily located on Westlaw or Lexis for a fee however it's much less expensive to search using the actual books found in the law library.

Elizabeth T. Tsai, *Construction and Application of § 245 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1255) Authorizing Adjustment of Status of Alien to that of Permanent Resident*, 4 A.L.R. Fed. 557 (1970 & Supp. 2005) - This annotation identifies judicial and representative administrative decisions which have construed or applied § 245 of the Immigration and Nationality Act of 1952, which authorizes the adjustment of the status of an alien inspected and admitted or paroled into the United States to that of an alien lawfully admitted for permanent residence if certain requirements are met.

B. Treatises, Books, and Manuals

Legal treatises, books and manuals may provide an in-depth overview of a particular legal subject. Treatises provide an authoritative and highly organized explanation, analysis and synthesis of the law. These sources can be located using the GSU law library ***GIL*** system and also through ***IndexMaster***.

Ira J. Kurzban, *Immigration Law Sourcebook: A Comprehensive Outline and Reference Tool* (9th ed. 2004-2005)	GSU Law Library KF4819.3.K87
Thomas E. Moseley & Austin T. Fragomen, Jr., *Immigration Legislation Handbook* § 7.35 (2d ed. 1999)	GSU Law Library KF4819 .I470
Alfred J Del Rey, Jr. & Austin T. Fragomen, Jr., *Immigration Law and Business* § 3.73 (Vol. 2 2005)	GSU Law Library KF4819 .I47
Melinda Miles & Eugenia Charles, LET HAITI LIVE: UNJUST U.S. POLICIES TOWARDS ITS OLDEST NEIGHBOR	Only available for purchase through commercial websites such as Amazon or the Haiti Reborn website.

C. Law Reviews and Journals

Law reviews are scholarly publication usually written by law school faculty or lawyers and edited by law students. Law review or journal articles can be very valuable secondary sources since they provide an indepth analysis of a specific topic and may lead to other primary sources. Law reviews and journals may be located through HeinOnline and LegalTrac.

James R. Zink, *Race and Foreign Policy In Refugee Law: A Historical Perspective of the Haitian Refugee Crises*, 48 DePaul L. Rev. 559 (1998).	Reviews the policies targeting Haitian Refugees and the resulting litigation.
Juan M. Bracete, *A Primer on Adjustment of Status in the United States*, 13 Immigr. & Nat'lity L. Rev. 3 (1991).	Reviews the procedures and requirements under §245 of the Act.
Malissia Lennox, *Refugees, Racism, and Reparations: A Critique of the United States' H Haitian Immigration Policy*, 45 Stan. L. Rev. 687 (1993).	Reviews the role race and racial discrimination play in contemporary U.S. immigration policy.
Sue A. Pressley, *In Little Haiti: The Elian Fight Sheds a Painful Light*, Wash. Post, January 15, 2000, at A3.	Provides a comparison of the legislation targeting Haitian immigrates and other classes of immigrates (specifically Cuban immigrates).

D. Looseleaf Services

Looseleaf service is a great resource because it often combines materials from many sources (i.e. statutes, judicial decisions, and administrative regulations) concerning a particular topic or area of law. A looseleaf service is made up of pages or pamphlets filed in looseleaf binders, which allows current information to be easily added to the existing materials. The ease of updating the binders allows supplementation to be added frequently, even weekly in some cases. Looseleafs can be accessed through GSU law library using the ***GIL*** system and many looseleafs are also available online through Westlaw or Lexis.

Haitian Refugees, 7 Bender's Immigr. Case Reporter (MB) B2-79 (1993).	GSU Law Library KF4815 .I46 1993 Also available on LexisNexis
Development of Refugee Policies, 3 Immigr. Law and Procedures (MB) 33 (1994).	GSU Law Library KF4819.G6 Also available on LexisNexis

E. Informational Newspapers

Haïti Progres is the largest Haitian weekly newspaper and is published in French, English, and Creole. This publication can be useful in providing updates on advocacy of existing or proposed legislation.

Haïti en Marche is another electronic resource and may also be helpful in locating proposed or controversial legislation. The only downside is that this publication is only published in French Creole.

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Computerized Research

Lexis

A great place to start on Lexis, within the *Research System Tab,* is Area of Law – by topic, selecting the topic Immigration. The researcher will have access to primary and secondary resources specifically dealing with Immigration issues. The topic can be further focused on Haitian Immigration through the use of keywords.

Westlaw

Information can be obtained on Westlaw using keywords such as "*HRIFA, Haitian Refugee, or Haitian Immigration*". It is also helpful to search within applicable databases.

The FIM-BIA database contains decisions of the United States Justice Department (DOJ), Board of Immigration Appeals. The FIM-OCAHO database contains decisions issued by the Chief Administrative Hearing Officer of the U. S. Department of Justice. Coverage begins with March 1988.

Useful Websites

U.S. Department of Homeland Security {www.dhs.gov}

On March 1, 2003, the former Immigration and Naturalization Service (INS) officially became the Bureau of Citizenship and Immigration Services (BCIS), operating under the Department of Homeland Security.

Mission
We will lead the unified national effort to secure America. We will prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation. We will ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce.

Bureau of Citizenship and Immigration Services (USCIS) {http://uscis.gov}

The USCIS is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

U.S. Department of Justice {www.usdoj.gov}

Mission is to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

The Executive Office for Immigration Review (EOIR) {www.usdoj.gov/eoir}

The EOIR was created on January 9, 1983, through an internal Department of Justice (DOJ) reorganization which combined the Board of Immigration Appeals (Board) with the immigration review function previously performed by the former Immigration and Naturalization Service (INS). EOIR is completely independent of both the immigration enforcement functions of the Department of Homeland Security (DHS), and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Under delegated authority of the Attorney General of the United States, EOIR administers and interprets federal immigration laws and regulations through the conduct of Immigration Court proceedings, appellate reviews, and administrative hearings in individual cases.

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Interest Groups, Associations, and Attorneys

Interest Groups, Associations, and Attorneys

National Coalition for Haitian Rights (NCHR) {www.nchr.org}

NCHR's Mission is to champion the rights of Haitians in the United States and Haiti.

Haiti Reborn {www.quixote.org/hr/}

Mission is to work in the United States on behalf of the Haitian people to build an active grassroots solidarity movement and to advocate for a more just U.S. foreign policy.

ABA Commission on Immigration {www.abanet.org/immigration}

The ABA is actively engaged in improving the nation's immigration laws.

American Immigration Lawyers Association {www.aila.org}

The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.

American Immigration Law Foundation {www.ailf.org}

The Foundation is dedicated to increasing public understanding of immigration law and policy and the value of immigration to American society; to promoting public service and excellence in the practice of immigration law; and to advancing fundamental fairness and due process under the law for immigrants.

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