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Office of the Executive Associate Commissioner

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MEMORANDUM FOR: ALL REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Changes to Section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), Based Upon the Provisions of and Amendments to the Legal Immigration Family Equity Act (LIFE).

On December 21, 2000, President Clinton signed the LIFE Act and the LIFE Act amendments of 2000. The purpose of this memorandum is to inform Immigration and Naturalization Service (Service) officers in the field of the effects of this legislation relative to NACARA 202 and HRIFA cases. An update to the *Adjudicator's Field Manual* will be issued in the near future. The affect of the recent legislation on applicants for suspension of deportation and special rule cancellation of removal under section 203 of NACARA [Guatemalans, Salvadorans, nationals of the former Soviet bloc, their dependents and certain individuals who have been battered or subject to extreme cruelty by a NACARA 203 beneficiary or by a United States Citizen (USC) or Lawful Permanent Resident (LPR)] is discussed in a separate memorandum.

Section 241(a)(5) of the Immigration and Nationality Act (INA) provides for the reinstatement of removal orders against aliens whom the Attorney General finds reentered the United States illegally following a removal or a voluntary departure while under an order of removal. In either of these scenarios, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed. Furthermore, the alien is not eligible and may not apply for any relief under the INA, and is to be removed under the prior order at any

time after his or her reentry. ***Service officers should note that Section 241(a)(5) of the Immigration and Nationality Act (INA) is no longer applicable to NACARA 202 and HRIFA applicants. Any cases that are pending denial should be reviewed to determine whether the intended denial is based in whole or in part on INA Section 241(a)(5). If the intended denial is based in whole or in part on INA Section 241(a)(5), the case should be re-evaluated.***

Section 212(a)(9)(A) contains grounds of inadmissibility relating to aliens previously removed or who departed voluntarily while an order of removal was outstanding. Also, within INA 212(a)(9)(C) are grounds of inadmissibility relating to aliens who: entered illegally or attempted an illegal entry on or after April 2, 1998, following an aggregate period of more than 1 year of unlawful presence; and aliens who entered illegally or attempted an illegal entry on or after April 1, 1997, following a removal that occurred at any time. ***The provisions of LIFE allow that an alien's inadmissibility under INA Section 212(a)(9)(A) and INA Section 212(a)(9)(C) may now be waived in NACARA 202 and HRIFA cases. The enabling legislation contained in LIFE states that in granting waivers of these grounds of inadmissibility, the Attorney General shall use the "standards" utilized in granting consent to reapply under INA Sections 212(a)(9)(A)(iii) and (C)(ii).*** When making a determination on an alien's application for consent to reapply, Service officers generally consider factors enumerated in precedent decisions such as Matter of Tin, 14 I & N Dec. 371, 373-374 (Comm. 1971), Matter of Carbajal, 17 I & N Dec. 272 (Comm. 1978), and Matter of Lee, 17 I & N Dec. 275 (Comm. 1978). Thus, the following factors shall also be applied in determining whether INA 212(a)(9)(A) or (C) should be waived in the case of an eligible NACARA 202 or HRIFA applicant.

1) The length of time the alien previously resided (or has resided) in the United States.
2) The alien's moral character.
3) The alien's responsibilities to family members residing in the United States.
4) The likelihood that lawful permanent residence will ensue in the near future.
5) Other hardships that could reasonably be foreseen.

The aforementioned list of factors is not all-inclusive. Furthermore, Congress has made its intent clear that NACARA 202 and HRIFA applicants may apply for waivers of INA Sections 212(a)(9)(A) and (C) while present in the United States. ***Any NACARA 202 or HRIFA cases pending denial should be reviewed to determine whether the intended denial is based in whole or in part on INA 212(a)(9)(A) or INA 212(a)(9)(C). If the intended denial is based in whole or in part on INA 212(a)(9)(A) or INA 212(a)(9)(C), the case should be re-evaluated to determine whether the denial is still warranted in light of the relief provided through the LIFE***

***Act.*** NACARA 202 and HRIFA applicants may apply for a waiver of any ground described in INA 212(a)(9)(A) or (C) by filing a Form I-601, Application for Waiver of Ground of Excludability, with the required fee. Guidelines for the adjudication of these cases will be issued in the forthcoming update to the *Adjudicator's Field Manual.*

An alien who has been made eligible for adjustment of status under NACARA 202 or HRIFA as a result of LIFE and whose application for adjustment of status under NACARA 202 or HRIFA has been denied may file a Motion to Reopen his or her case before the Service IF:

- The Service has NOT issued a Notice to Appear (Form I-862), a Notice of Referral to Immigration Judge (Form I-863), or a Notice of Certification (Form I-290C) placing the alien in proceedings before the immigration judge; AND

- The alien pays the filing fee for a motion to reopen set forth in 8 CFR 103.7(b) or is granted a waiver of such fee in accordance with 8 CFR 103.7(c).

An alien who has been made eligible for adjustment of status under NACARA 202 or HRIFA but failed to apply for such adjustment by the statutory deadline of March 31, 2000, may seek to reopen his or her removal proceedings before the immigration court or the Board of Immigration Appeals, as appropriate, to apply for NACARA 202 or HRIFA adjustment. He or she must file such a motion to reopen on or before June 19, 2001.