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Office of the Executive Associate Commissioner

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Washington, DC 20536

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

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

SUBJECT: Post-December 21, 2000, Procedures for Aliens Who Have Been Issued Orders of Deportation or Orders of Removal and Fall Within the Classes of Aliens Made Eligible for Adjustment of Status Under the Nicaraguan Adjustment and Central American Relief Act (NACARA) Section 202 or the Haitian Refugee Immigration Fairness Act (HRIFA), Based Upon the Enactment of the Legal Immigration Family Equity Act (LIFE) and its Amendments.

This memorandum supersedes the March 31, 2000 memorandum issued by the Office of Field Operations. March 31, 2000 was the deadline for filing applications for adjustment of status by Nicaraguans and Cubans under section 202 of NACARA. It was also the deadline for filing applications for adjustment of status by Haitian principal applicants under HRIFA. Eligible Haitian dependent applicants (i.e., a principal applicant's spouse or child who entered the United States at any time, or a principal applicant's unmarried son or daughter who has been in the United States since December 31, 1995) may continue to file applications for adjustment of status under HRIFA, provided the principal applicant filed his or her application on or before March 31, 2000.

On December 21, 2000, President Clinton signed into law the LIFE Act and its amendments. LIFE now provides that section 241(a)(5) of the Immigration and Nationality Act (INA) does not apply and that waivers of inadmissibility under INA sections 212(a)(9)(A) and (C) may be granted without the alien having to depart the United States. LIFE also allows aliens made eligible to apply for such adjustment under the LIFE Act to file one motion to reopen their

removal proceedings to apply for NACARA 202 or HRIFA adjustment not later than June 19, 2001. This memorandum provides instructions on the processing of removable aliens (1) who were made eligible for adjustment of status under NACARA section 202 or HRIFA and may seek a motion to reopen their removal proceedings in order to apply for adjustment, or (2) who are eligible to apply for adjustment of status as dependent applicants under HRIFA.

- Aliens Under Final Orders Who Were Made Eligible for Adjustment of Status under NACARA section 202 or HRIFA by LIFE. Refer to the criteria set forth in NACARA section 202 and HRIFA for determinations as to whether an alien appears to be eligible for adjustment of status under those provisions of law. In addition to the general eligibility requirements, in order to be granted a motion to reopen aliens must demonstrate (1) that they failed to apply for NACARA 202 or HRIFA because either they were subject to an INA section 241(a)(5) reinstatement of removal order, or were unable to obtain waivers of inadmissibility under INA sections 212(a)(9)(A) or (C) because of presence in the United States, or (2) that their NACARA 202 or HRIFA adjustment application was denied on either basis. These criteria were also discussed in Headquarters memoranda of December 19, 1997, December 22, 1998, and February 18, 1999. If an alien who is under a final order of deportation or a final order of removal appears to be eligible to reopen his or her proceedings pursuant to LIFE to apply for adjustment as either a principal applicant or a dependent applicant, do not execute the deportation or removal order until June 19, 2001, or, if the alien has filed a motion to reopen, until a decision on the motion has been issued by the Executive Office of Immigration Review. If the alien is NOT eligible for reopening (i.e., alien is not subject to INA sections 241(a)(5) or 212(a)(9)(A) or (C)), the Order of Deportation or the Order of Removal may be executed. Similarly, the Order of Deportation or the Order of Removal may be executed notwithstanding the fact that the alien was subject to INA sections 241(a)(5) or 212(a)(9)(A) or (C) if the alien is not otherwise substantively eligible for adjustment under NACARA 202 or HRIFA (for example, the alien is not eligible based on his or her nationality, or he or she is inadmissible under a ground which is not exempted by NACARA 202 or HRIFA and is not eligible for a waiver of such inadmissibility).

- Aliens Eligible to Apply for Adjustment of Status as Dependent Applicants under HRIFA. If an alien is eligible to apply for adjustment under HRIFA as a dependent applicant, but has not yet applied, defer any removal action for 60 days and instruct the

alien that he or she should file his or her application for adjustment within that period. If the alien does not apply for adjustment within 60 days of being so advised, you may initiate or resume removal action.

Consistent with earlier guidance on NACARA and HRIFA, Nicaraguans, Cubans, and Haitians subject to mandatory detention shall not be released from custody. Possible eligibility under NACARA and HRIFA may, however, be considered for purposes of discretionary custody determinations.

If you have any questions, please contact Kevin J. Cummings at 202-514-4754.