

(2) *Appeal of immigration judge decision.* Once the immigration judge issues his or her decision on the application, either the alien or the Service may appeal the decision to the Board. Such appeal must be filed pursuant to the requirements for appeals to the Board from an immigration judge decision set forth in §§ 3.3 and 3.8 of this chapter.

(3) *Rescission of the decision of an immigration judge.* The decision of an immigration judge under paragraph (n)(1) of this section denying an application for adjustment under section 202 of Public Law 105-100 for failure to appear may be rescinded only:

(i) Upon a motion to reopen filed within 180 days after the date of the denial if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act;

(ii) Upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice of the hearing in person (or, if personal service was not practicable, through service by mail to the alien or to the alien's counsel of record, if any) or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(iii) Upon a motion to reopen filed not later than June 19, 2001, by an alien present in the United States who became eligible for adjustment of status under section 202 of Public Law 105-100, as amended by section 1505, Public Law 106-554.

(o) *Transition period provisions for tolling the physical presence in the United States provision for certain individuals—*

(1) *Departure without advance authorization for parole.* In the case of an otherwise eligible applicant who departed the United States on or before December 31, 1997, the physical presence in the United States provision of section 202(b)(1) of Pub. L. 105-100 is tolled as of November 19, 1997, and until July 20, 1998.

(2) *Departure with advance authorization for parole.* In the case of an alien who departed the United States after having been issued an Authorization for parole of an Alien into the United States (Form I-512), and who returns to the United States in accordance with

the conditions of that document, the physical presence in the United States requirement of section 202(b)(1) of Pub. L. 105-100 is tolled while the alien is outside the United States pursuant to the issuance of the Form I-512.

(3) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (k)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence in the United States provisions of section 202(b)(1) of Pub. L. 105-100 is tolled from the date the application is received at the Texas Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I-512.

(Approved by the Office of Management and Budget under Control Number 1115-0221)

[63 FR 27829, May 21, 1998, as amended at 65 FR 15854, Mar. 24, 2000; 66 FR 29451, May 31, 2001]

#### § 245.14 [Reserved]

#### § 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) *Definitions.* As used in this section, the terms:

*Abandoned* and *abandonment* mean that both parents have, or the sole or surviving parent has, or in the case of a child who has been placed into a guardianship, the child's guardian or guardians have, willfully forsaken all parental or guardianship rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

*Guardian* means a person lawfully invested (by order of a competent Federal, State, or local authority) with the power, and charged with the duty, of taking care of, including managing the property, rights, and affairs of, a child.

*Orphan* and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents due to any of the following:

(1) The death or disappearance of, desertion by, or separation or loss from