

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

1 RESOLVED, That the American Bar Association urges the Department of Homeland Security
2 (“DHS”) to create a Haitian Family Reunification Parole Program, and immediately begin
3 paroling into the United States already-approved Haitian beneficiaries of family-based visa
4 petitions.

REPORT

I. HAITIAN FAMILY REUNIFICATION PAROLE PROGRAM

The aim of this Resolution is to support the creation of a Haitian Family Reunification Parole Program.¹ Such program would enable already-approved beneficiaries of family-based immigration petitions the ability to travel to the United States to wait for a permanent resident visa rather than waiting in Haiti where the average delay is 3-11 years.² Authority to create this program rests within the Secretary of Homeland Security's existing parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (INA).³ Approximately 112,450 Haitians currently possess approved family-based petitions and are waiting for immigrant visas to become available in order to travel to the United States.⁴ Allowing these Haitians to come to the U.S. in the near-term will aid ongoing humanitarian efforts following the January 2010 earthquake that devastated Haiti.

The efforts outlined in this Resolution will specifically assist in Haiti's reconstruction process by allowing more Haitians to send remittances back home to their families.⁵ According

¹ INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (permitting parole of an alien into the United States "for urgent humanitarian reasons or significant public benefit"); *see also* 8 CFR § 212.5(c) & (d) (discretionary authority for granting parole).

² Royce Murray & Sarah Williamson, *Migration as a Tool for Disaster Recovery* 1-60 (Center for Global Development, Working Paper No. 225, 2011), *available at* <http://www.cgdev.org/content/publications/detail/1425143/>

³ INA § 212(d)(5)(A) authorizes the Attorney General to grant parole for urgent humanitarian reasons, however, this authority was transferred to the Secretary of Homeland Security once immigration functions housed within the Department of Justice and the Immigration and Naturalization Service (INS) were moved to the Department of Homeland Security (DHS) and its component immigration agencies. Section 1512(d) and 1517 (the transition and savings provisions) of the Homeland Security Act of 2002 (HSA) provide that references relating to the INS in statutes and regulations shall be deemed to be related to the appropriate official or office within DHS. Accordingly, the Secretary of Homeland Security possesses authority to grant parole. *See* "Authority of the Secretary of Homeland Security, Delegations of Authority; Immigration Laws," 68 FR 10922 (March 6, 2003) *available at*: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-88492/0-0-0-91881/0-0-0-92816.html>

⁴ Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center, Nov. 1, 2010, at 3, *available at* <http://travel.state.gov/pdf/WaitingListItem.pdf>; http://www.philly.com/philly/blogs/inq_ed_board/97630409.html; *Urging the Obama Administration to Create a Haitian Family Reunification Parole Program to Help Haiti Recover, Save Lives, and End a Double Standard*, The Council of the city of Philadelphia, April 28, 2011).

⁵ "Haiti: Expedite visas for family members," *Boston Globe* editorial, July 17, 2010, http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/07/17/haiti_expedite_visas_for_family_members/;

"Helping Haitians help themselves," *Los Angeles Times* editorial, July 21, 2010, <http://www.latimes.com/news/opinion/editorials/la-ed-haitians-20100721.0.3618364.story>;

"Helping the Haitians," *Philadelphia Inquirer* editorial, July 2, 2010, http://www.philly.com/philly/blogs/inq_ed_board/97630409.html;

Posting of Dilip Ratha People Move, A blog about migration, remittances, and development blog, <http://blogs.worldbank.org/peoplemove/> Jan. 19, 2010 14:37 EST.

"President Obama Could Rapidly Aid Haitian Immigration Seekers," *Washington Post* editorial, June 26, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/25/AR2010062504520.html>;

"The U.S. Should Welcome Haitians In," *Washington Post* editorial, January 29, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803513.html>;

to the World Bank remittances to Haiti are 20% of Haiti's GDP and "key" to Haiti's recovery.⁶ If just one quarter of the DHS-approved beneficiaries were permitted to come to the United States, approximately 300,000 Haitian earthquake victims would benefit from remittances sent back to Haiti.⁷

This Resolution can also potentially save the lives of many DHS-approved beneficiaries as many of them may have to wait up to eleven years for their priority dates to become current.⁸ The earthquake exacerbated already grave economic and health conditions in Haiti, thus beneficiaries who remain in Haiti are at risk of exposure to cholera, gender-based violence, depraved tent-city conditions, and political and environmental instability.⁹ Accordingly, DHS-approved beneficiaries who are forced to wait in Haiti may perish before they are reunited with their families in the United States.

Some critics have expressed concern about creating a precedent that would be difficult to follow regarding natural disaster-affected countries, but such precedent already exists. To alleviate concerns about overwhelming resources, DHS need not tackle the entire group of 112,450 at once. The U.S. Government could prioritize parole applications based on the chronology of one's visa priority date or could focus on a single smaller subset of beneficiaries, such as the 15,804¹⁰ spouses and minor children of lawful permanent residents ("Preference Category 2A"). Moreover, paroling in already-approved family-based petition beneficiaries does not increase the overall numbers of those immigrating, as these individuals will eventually receive a visa. The only factor that is affected is timing, which can be a life or death decision for a Haitian.

The Secretary of Homeland Security and her pre-DHS immigration predecessors at the Department of Justice have possessed statutory authority to parole in non-citizens for decades. Section 212(d)(5)(A) of the INA (8 USC §1182(d)(5)(A)) and Section 212.5 of Title 8 of the Code of Federal Regulations (CFR) authorize the Secretary and her designees to issue parole to foreign nationals on a case-by-case basis for urgent humanitarian reasons if a visa is unavailable.¹¹ Since the 1950s the United States government has repeatedly awarded parole status to victims of tragedies, and has continued to exercise its power to grant parole to migrants from other countries, including Cuba.¹² In 2007 the Cuban Family Reunification Parole Program

U.S. Conference of Mayors Resolution #43: Urging Parole for all Haitian Beneficiaries of Approved Immigrant Visa Petitions and Expedited Consideration and Approval of all Pending Immigrant Visa Petitions. June 14, 2010.

⁶ [Haiti Remittances Key to Earthquake Recovery](#), World Bank, May 17, 2010; "Helping Haitians help themselves," *Los Angeles Times* editorial, July 21, 2010, <http://www.latimes.com/news/opinion/editorials/la-ed-haitians-20100721,0,3618364.story>.

⁷ [Urging the Obama Administration to Create a Haitian Family Reunification Parole Program to Help Haiti Recover, Save Lives, and End a Double Standard](#), The Council of the city of Philadelphia, (April 28, 2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center, Nov. 1, 2011, at 5, *available at* <http://travel.state.gov/pdf/WaitingListItem.pdf>.

¹¹ Government Accountability Office (GAO), *Immigration Benefits: Internal Controls for Adjudicating Humanitarian Parole Cases Are Generally Effective, But Some Can Be Strengthened*, (Feb. 2008) *available at*: <http://www.gao.gov/new.items/d08282.pdf>.

¹² Memorandum In Support of a United States Policy Granting Humanitarian Parole for Haitian Victims of the Earthquake of Jan. 12, 1010 (Feb. 25, 2010), *available at* <http://ijdh.org/wordpress/wp->

which enables thousands of Cuban beneficiaries to come to the U.S. to wait for their visa priority dates to become current, was updated to address a similar backlog of cases.¹³ The Secretary commenced such a program for Cubans in order to promote family unity in the face of long waits for visas and to encourage legal, orderly migration. Haitian families deserve the same opportunity to be reunited with their loved ones in an analogous manner. Indeed, after the 2010 earthquake DHS issued parole to over 1,000 Haitian orphans who were in the process of being adopted by U.S. Citizen prospective adoptive parents at the time of the disaster.¹⁴ However, Haitian families split between the U.S. and Haiti were not reunited during this time with the use of parole.

Moreover, the Secretary of Homeland Security's discretion to grant parole is quite broad, as has been demonstrated in the decision to grant parole to orphans in Haiti.¹⁵ Decisions are largely based on whether there are urgent, compelling reasons why the person needs to enter the United States, such as severe medical conditions and family reunification.¹⁶ The January 12, 2010 earthquake in Haiti killed over 200,000 people and further crippled its government, economy, and already crumbling infrastructure. A subsequent cholera outbreak infected over 400,000 people and killed more than 6,000.¹⁷ Hundreds of thousands of Haitians continue to live in displacement camps largely scattered around the capital of Port-au-Prince, almost two years after the earthquake.¹⁸ The dire, life-threatening circumstances in which Haitians find themselves fall squarely within these broad humanitarian criteria.

Finally, as of November 2011, more than 112,000 Haitian family members had already established their family relationship to a U.S. Citizen or lawful permanent resident and were

[content/uploads/2010/01/Humanitarian-Parole-Memo-to-USCIS-FINAL-2-26-2010.pdf](http://www.dhs.gov/xnews/releases/pr_1158350356206.shtm) (hereinafter IJDH Parole Memo).

¹³ See DHS Office of the Press Secretary, "USCIS Will Further Strengthen Measures That Support the Reunification of Families Separated by the Castro Regime," Aug. 11, 2006, http://www.dhs.gov/xnews/releases/pr_1158350356206.shtm; USCIS, "Questions and Answers: Cuban Family Reunification Parole Program," Nov. 21, 2007 (updated Jan. 28, 2008), http://www.uscis.gov/files/pressrelease/CFRP_QA_21nov02.pdf.

¹⁴ *Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans*, 18 Jan 2010, http://www.dhs.gov/ynews/releases/pr_1263861907258.shtm. See also Whitney A. Reitz, "Reflections on the Special Humanitarian Parole Program for Haitian Orphans," *New York Law School Law Review*, Vol 55, 2010/11, pp. 791-798; USCIS, "Questions and Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti," last updated Feb. 26, 2010, *available at*: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8f712d86a8756210VgnVCM100000082ca60aRCRD&vgnnextchannel=4653d5e587096210VgnVCM100000082ca60aRCRD>.

¹⁵ INA sec. 212(d)(5); 8 CFR 212.5. See also *ibid*, U.S. Government Accountability Office Report on Parole: <http://www.gao.gov/products/GAO-08-282>.

¹⁶ INA sec. 212(d)(5); 8 CFR 212.5; IJDH Parole Memo. See also U.S. Citizenship and Immigration Services list of what qualifies and Humanitarian Parole:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=acc3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=acc3e4d77d73210VgnVCM100000082ca60aRCRD>

¹⁷ *NYTimes Editorial*, "Haiti's Needless Cholera Deaths," Sept. 6, 2011, *available at*:

<http://www.nytimes.com/2011/09/07/opinion/haitis-needless-cholera-deaths.html>.

¹⁸ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Earthquake Response: Majority of Haitians in camps want to leave but have nowhere to go," *Humanitarian Bulletin* (26 July-18 August 2011), *available at*:

[http://reliefweb.int/sites/reliefweb.int/files/resources/Ocha%20Haiti%20humanitarian_Bulletin%209%20English.p](http://reliefweb.int/sites/reliefweb.int/files/resources/Ocha%20Haiti%20humanitarian_Bulletin%209%20English.pdf)
[df](http://reliefweb.int/sites/reliefweb.int/files/resources/Ocha%20Haiti%20humanitarian_Bulletin%209%20English.pdf).

113

waiting their turn for an immigrant visa to be issued.¹⁹ Based on the number of petitions, the average wait time is between three and 11 years. As a practical matter, any efforts to parole these approved family members into the U.S. would need to begin with a more manageable group, such as the nearly 16,000 already-approved spouses or children of lawful permanent residents.²⁰ (Note: Spouses and children (unmarried and under age 21) of U.S. Citizens are termed “immediate relatives” and are eligible for an unlimited number of visas; therefore, they do not wait for visas like the other family “preference” categories do.) In the alternative, the Department of Homeland Security could consider parole requests based on the chronological order in which the visa applications were filed.

Respectfully Submitted,

Michael E. Burke
Chair, Section of International Law

August 2012

¹⁹ National Visa Center, “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2010,” p. 3, *available at*: <http://travel.state.gov/pdf/WaitingListItem.pdf>

²⁰ *Id.* at 5.

GENERAL INFORMATION FORM

Submitting Entity: Section of International Law

Submitted By: Michael E. Burke, Chair, Section of International Law

1. Summary of Resolution(s)

Asking ABA to urge the Department of Homeland Security (DHS) to create a Haitian Family Reunification Parole Program for already-approved Haitian beneficiaries of family based visa petitions to expedite their entry to the United States

2. Approval by Submitting Entity.

The Section of International Law Council approved the R&R on February 3, 2012.

3. Has this or a similar resolution been submitted to the House or Board previously?

We are unaware of any similar resolution that has previously been submitted to the House or Board.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

None identified.

5. What urgency exists which requires action at this meeting of the House?

More than two years after a devastating earthquake in which hundreds of thousands of people were killed, half a million Haitians continue to live in displacement camps, exposed to an unprecedented cholera epidemic and other life-threatening circumstances. Haitian family members of U.S. citizens and lawful permanent residents who have had an immigrant petition approved can wait as long as 3-11 years in Haiti for an immigrant visa. Relocating Haitian family members who are already approved for entry to the United States will reduce the number of people living in displacement camps, promote family reunification, and allow more Haitians to send remittances home to support their families and economy.

6. Status of Legislation. (If applicable)

There is no pending legislation.

However the report (No. 112-69) attached to the appropriations bill for Homeland Security (S. 3216) passed by the Senate Appropriations Committee on May 22nd

encourages DHS to use its parole authority in the context of natural disasters, such as the earthquake in Haiti.

There is no mention of parole or Haiti in the bill itself, but on page 123 of the report it reads:

Use of Parole

The Committee encourages DHS use of parole authority under section 212(d)(5) of the Immigration and Nationality Act to address urgent humanitarian needs—especially in the interest of family unity and to address medical emergencies—in the period following exceptionally calamitous natural disasters such as the Haitian earthquake on January 12, 2010. The Committee urges the Secretary to allocate sufficient resources for similar appropriate responsiveness to rare and exceptionally deadly and destructive natural disasters in the future.

The House Appropriations Committee recently passed the appropriations bill for Homeland Security, HR 5855, but neither the [bill](#) nor the [report](#) mention anything about family reunification parole or Haiti.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

ABA would need to contact DHS to communicate the ABA request that the Secretary of DHS use her existing parole authority to implement a Haiti Family Reunification Parole Program. The ABA would urge DHS collaboration with the U.S. Department of State, as the U.S. Embassy in Port-au-Prince, Haiti would be involved in implementation on the ground in Haiti.

8. Cost to the Association. (Both direct and indirect costs)

None known.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

This resolution is being provided to other ABA entities for support. It is being provided to the following ABA entities for possible co-sponsorship:

All Sections, Divisions, Commissions, Centers and Committees.

11. Contact Name and Address Information. (Prior to the meeting)

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12. Contact Name and Address Information. (Who will present the report to the House?)

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EXECUTIVE SUMMARY1. Summary of the Resolution

The American Bar Association urges the Department of Homeland Security (DHS) to create a Haitian Family Reunification Parole Program to expedite entry to the United States by already-approved Haitian beneficiaries of family-based visa petitions who will otherwise languish years longer in Haiti because of the visa backlog in the U.S. immigration system.

2. Summary of the Issue that the Resolution Addresses

The resolution assists with Haiti's reconstruction efforts from the earthquake in at least two critical ways by relocating people from the displacement camps and allowing more Haitians to send remittances back home to their families, providing a needed boost to Haiti's economy.

3. Please Explain How the Proposed Policy Position will address the issue

As of November 2011, more than 112,000 Haitian family members of U.S. citizens and lawful permanent residents who have already established their family relationship are waiting for their visas to be issued, with an average wait time of between three and 11 years. The proposed resolution will reunite families as well as aid in reconstruction efforts by enabling approved family members the opportunity to wait in the United States and send remittances back to family members left in Haiti.

4. Summary of Minority Views

None known at this time.