



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0013]

#### **Agency Information Collection Activities; Revision, of a Currently Approved Collection: Application for Travel Document. Removal of Instructions Regarding the Haitian Family Reunification Program and Filipino World War II Veteran Parole Program**

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed revision of a currently approved collection of information. The revision is necessary to announce and implement a change in USCIS policy to terminate the Haitian Family Reunification Parole (HFRP) program and the Filipino World War II Veterans Parole (FWVP) program, to rescind the applicable policy statements, and to revise the Instructions for USCIS Form I-131, Application for Travel Document, to remove references to and provisions regarding those programs. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the *Federal Register* to obtain comments regarding these policy changes, the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments will be accepted for 60 days until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Effective date of changes: These changes will be effective as of the date the form is approved by OMB. Cases that have already been filed as of the effective date of the new form and policies will be processed to a decision.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0013 in the body of the letter, the agency name and Docket ID USCIS-2007-0045. Submit comments via the Federal eRulemaking Portal Web site at <https://www.regulations.gov> under e-Docket ID number USCIS-2007-0045. USCIS is limiting communications for this Notice as a result of USCIS' COVID-19 response actions.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

**SUPPLEMENTARY INFORMATION:**

**I. Background:**

Section 11 of Executive Order 13767 of January 25, 2017, "Border Security and Immigration Enforcement Improvements, (Section 11) provides that "[i]t is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens." Section 11(d) instructs DHS to "take appropriate action to ensure that parole authority under section 212(d)(5) of the [Immigration and Nationality Act ("INA")] (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an alien demonstrates an urgent humanitarian need or a significant public benefit derived from such parole."

On February 20, 2017, then-Secretary of Homeland Security Kelly issued a memorandum entitled "Implementing the President's Border Security and Immigration Enforcement Improvements Policies." In that memorandum, Secretary Kelly stated that "[t]he statutory language authorizes parole in individual cases only where, after careful consideration of the

circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit...[i]n my judgment, such authority should be exercised sparingly.” Additionally, it stated that “[t]he practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for illegal immigration.”<sup>1</sup>

Accordingly, USCIS undertook a review of existing categorical parole programs. USCIS is announcing the termination of HFRP and FWVP programs and is revising the Instructions for Form I-131 to remove references to and provisions regarding those programs. USCIS is also revising the form to remove references to the Cuban Family Reunification Parole (CFRP) Program.

#### **A. HFRP**

DHS established the HFRP program in 2014 as an exercise of its discretionary parole authority to permit certain eligible Haitians in Haiti who are the beneficiaries of approved family-based immigrant petitions to join their family members in the United States for an initial period of three years while they wait for immigrant visas to become available. 79 FR 75581 (Dec. 18, 2014). Consistent with INA section 212(d)(5), 8 U.S.C. 1182(d)(5), the decision to parole a particular alien into the country was a case-by-case, discretionary determination.

#### **B. FWVP**

In 2016, USCIS determined that paroling qualified applicants under FWVP would generally yield a “significant public benefit” (recognizing sacrifices of Filipino World War II veterans). 81 FR 28907 (May 9, 2016). USCIS also determined that grants of parole under the FWVP program would often address urgent humanitarian concerns (recognizing the advanced age of these veterans and the need for care by their alien family members). *Id.* Consistent with

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<sup>1</sup> [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).

section 212(d)(5), 8 U.S.C. 1182(d)(5), the decision to parole a particular alien was a case-by-case, discretionary determination.

### **C. Explanation for change**

For both the HFRP and FWVP programs, DHS broadly exercised its statutory parole authority for multiple members of a narrowly defined group. Notwithstanding the perceived benefits of these categorical parole programs when they were established, this Administration undertook a renewed analysis. Consistent with Secretary Kelly's February 20, 2017 implementing memorandum, USCIS has determined that, as a matter of policy, the HFRP and FWVP programs do not meet DHS's obligation to narrowly exercise its parole authority.

Therefore, DHS is now rescinding the determination that there is a presumption that there are significant public benefit or urgent humanitarian reasons for parole requests from new applicants who meet the specific criteria established under HFRP and FWVP programs. Accordingly, new applicants who meet the FWVP and HFRP criteria will no longer be presumed to have demonstrated that there are significant public benefit or urgent humanitarian reasons present in their case by virtue of meeting HFRP and FWVP criteria.

USCIS will continue to adjudicate requests from current beneficiaries of the HFRP and FWVP programs who are already in the United States under the existing standards of those programs and who request a new period of parole.

## **II. Administrative Procedure Act (APA).**

### **A. Discretionary policy statement.**

USCIS established the HFRP and FWVP programs through policy statements announced by Federal Register notice (FRN). 81 FR 28907; 79 FR 75581. USCIS also revised the Instructions for Form I-131 to provide instructions and evidence requirements to implement the policies. USCIS did not change its regulations.

The HFRP and FWVP programs were established using DHS' discretionary parole authority found in INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), and 8 CFR 212.5(c)-(d).

An alien does not have a right to parole and there is no obligation for DHS to grant parole. Parole is an exercise of the Secretary's discretionary authority to permit an alien to temporarily enter the United States for certain reasons on a case-by-case basis for urgent humanitarian reasons or for a significant public benefit. The APA exempts from its requirements for public notice and comment general statements of policy, "issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power." *Lincoln v. Vigil*, 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp. v. Brown*, 441 U.S. at 302, n. 31 (1979) (quoting Attorney General's Manual on the Administrative Procedure Act 30, n. 3 (1947))). The termination of the HFRP and FWVP programs does not change the statutory standard for parole, and parole will remain an avenue for DHS to authorize, in its discretion, for certain aliens to travel to the United States. Therefore, terminating the HFRP and FWVP programs is exempt from the notice and comment requirements of the APA as a general statement of policy advising the public prospectively of the manner in which USCIS will exercise a discretionary power. *Lincoln*, 508 U.S. at 197.

DHS has reviewed this policy change and determined that it would be highly unlikely to adversely affect the substantive rights of some of the affected parties. DHS understands that it must show that there are good reasons for the new policy and acknowledge its conscious change of course, and that reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (citing *Smiley v. Citibank (South Dakota), N. A.*, 517 U.S. 735, 742 (1996)).

Executive Order 13767 instructs DHS to take appropriate action to ensure that parole authority under section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5), is exercised only on a case by case basis in accordance with the plain language of the statute, and in all circumstances only when an alien demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole. DHS believes the existing broad presumption that there are significant public benefit or urgent humanitarian reasons to consider parole for new applicants who meet the specific pre-

established criteria under the HFRP and FWVP programs is inconsistent with the Executive Order and Secretary Kelly's implementing guidance directing that the policy of DHS is to exercise its parole authority narrowly.

### **1. HFRP**

The Federal Register notice establishing HFRP states, "By expanding existing legal means for Haitians to immigrate, the HFRP Program serves a significant public benefit by promoting safe, legal, and orderly migration to the United States. Furthermore, it supports U.S. goals for Haiti's long-term reconstruction and development. Once paroled into the United States, HFRP Program beneficiaries will be eligible to apply for employment authorization, and those who are able to work may contribute to Haiti's post-earthquake reconstruction and development through remittances." 79 FR 75581.

DHS has determined Haiti has made significant progress recovering from the 2010 earthquake and subsequent effects. With U.S. and international support for recovery, reconstruction, and development programs, Haiti has achieved significant improvements in basic health indicators, agricultural production, and jobs creation, according to the U.S. Department of State. 98 percent of 1.5 million people displaced following the earthquake have been resettled as of 2020, according to the International Organization for Migration. In light of these determinations, DHS has determined that the HFRP program no longer serves a significant public benefit for new applicants.

### **2. FWVP**

The Federal Register notice establishing FWVP states, "Recognizing the contributions and sacrifices of Filipino veterans who fought for the United States during World War II and their families, USCIS has decided to implement the FWVP policy. In many cases, "paroling these family members may also allow them to provide support and care for elderly veterans or their surviving spouse...For certain Filipino American family members, this wait can exceed 20 years" 81 FR 28097. Further, "In light of the circumstances described above, among other

considerations, USCIS believes that the parole of qualified applicants who establish on a case-by-case basis that they are eligible for consideration under this policy and merit a favorable exercise of discretion would generally yield a ‘significant public benefit.’ Additionally, considering the advanced age of World War II Filipino veterans and their spouses, and their increased need for care and companionship, grants of parole under the FWVP policy would often address urgent humanitarian concerns. In all cases, whether to parole a particular alien under this policy is a discretionary determination that will be made on a case-by-case basis.” *Id.*

DHS has determined that the FWVP program is inconsistent with the policy decision to narrowly exercise DHS’ parole authority in making determinations of significant public benefit. With regard to urgent humanitarian concerns, DHS has no data substantiating that the admission of participants in the FWVP program routinely addresses an urgent humanitarian concern. An eligible alien may request parole even if the veteran and spouse the alien is petitioning to support are both deceased. The parole of an alien may not actually be yielding any significant public or humanitarian benefit in such instances. For these reasons, DHS believes that new FWVP program applications are more appropriately adjudicated through an individual application instead of a categorical program with a presumption of a significant public benefit or urgent humanitarian concern.

#### **B. Reliance interest.**

DHS has taken into account serious reliance interests that may be engendered by the 2014 and 2016 HFRP and FWVP policies. With respect to initial and pending applicants, DHS has determined that potential applicants cannot reasonably be determined to have taken an action in detrimental reliance on DHS or USCIS continuing these programs. It is not reasonable that potential applications would make major changes in their lives or incur significant expenses in anticipation that DHS would continue these programs in perpetuity and that they would be able to apply and be approved. With respect to current HFRP and FWVP parolees, DHS acknowledges the reliance interest of those aliens who are not yet lawful permanent residents and

will make a new period of parole under the criteria of these programs available to them, on a case-by-case basis, to ensure continued eligibility. Further discussion of these reliance interests follows.

### **1. Reliance interest of HFRP parolees:**

For HFRP, DHS has determined that any alien who has not yet applied for the HFRP program is unlikely to have incurred costs or been harmed based on relying on DHS continuing that policy because the petitioner must receive an invitation to apply, and USCIS has not issued any such invitations since 2016. Thus, although DHS is changing its past pattern and practice, the program has not been open for new applicants for four years, and a potential applicant will not be surprised by the change and will not have suffered harm as a result of acting in reliance on the continuation of the HFRP program. Haitian petitioners with an approved Form I-130 or their Haitian beneficiary relatives should not complete a Form I-131, incur expenses, and take actions in reliance on USCIS being able to process their application when they cannot do so on their own accord and without an invitation from USCIS. Nevertheless, DHS is formally announcing in this notice that the HFRP program will be terminated to provide advance notice to parties who may be affected. To the extent that an alien has a pending Form I-131 for HFRP as of the date of this notice, USCIS will process and adjudicate that request to completion. USCIS welcomes public comments on all of the effects of this change in policy.

With respect to granting a new parole period (“re-parole”) for HFRP beneficiaries already paroled into the United States, DHS acknowledges that a current beneficiary has significant reliance interest in the continuation of the program as they were when they were granted parole. A current parolee decided to accept the USCIS invitation to apply for parole and expend the time, effort, and expense to uproot his or her life and move to the United States as a parolee, instead of staying in Haiti and waiting for an immigrant visa to become available. When the program was established, USCIS informed HFRP beneficiaries that it was their responsibility to seek re-parole in the United States until eligible to adjust status and they should apply for re-

parole at least 90 days before parole expires. USCIS informed approved HFRP beneficiaries that, if their immigrant visa is still unavailable at the time their parole expires, they must apply to USCIS for a new parole authorization and pay the required fee. Therefore, HFRP program beneficiaries are expected to apply for lawful permanent resident status as soon as their immigrant visa becomes available. The majority of HFRP beneficiaries will have an immigrant visa available at the time their parole expires. Given these reliance interests, DHS will accept requests for re-parole under the existing standards of the HFRP program.

## **2. Reliance interest of FWVP parolees:**

For FWVP, DHS has determined that an applicant who has not yet applied for the FWVP program is unlikely to have incurred costs or been harmed based on relying on DHS continuing that policy. To the extent that an alien is in the process of completing and filing a request, USCIS will provide two public notices of the impending form, policy and procedure change. Aliens who are currently in the process of completing their paperwork may also apply for the FWVP program until the date that it is terminated, which is when the Form I-131 changes go into effect. To the extent that applicants who are not yet working on, researching, and gathering necessary evidence for an application may no longer receive parole after this change, DHS believes the FWVP program is inconsistent with its narrower interpretation of the parole authority and the public policy goals supported by a narrow use of its parole authority (as described in Secretary Kelly's memorandum) justify and outweigh any minor reliance interests of those aliens who may have contemplated filing an application for FWVP but have not yet done so at the time the program is formally terminated. If an alien has an I-131 application for FWVP pending as of **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, USCIS will process and adjudicate that request to completion. USCIS welcomes public comments on all of the effects of this change in policy.

As for granting re-parole to FWVP beneficiaries already paroled initially into the United States, DHS acknowledges that a current beneficiary as well as U.S. citizen petitioners may have

a significant reliance interest in the continuation of the program as it was when the alien was granted parole. A current parolee decided to avail himself or herself to the USCIS opportunity to apply for parole and expend the time, effort, and expense to uproot his or her life and move to the United States as a parolee, instead of staying in the Philippines and waiting for an immigrant visa to become available. The beneficiary (the Filipino war veteran or his or her spouse) may also have a reliance interest. The veteran or spouse may have paid the fees and expended other resources in contemplation of relatives coming to the United States to care for them, or may have forgone other living situations that were available to them if they did not have the care of the relative who had been able to join them in the US. When the program was established, USCIS informed FWVP parolees that it was their responsibility to seek re-parole in the United States until eligible to adjust status and they should apply for re-parole at least 90 days before parole expires. USCIS informed approved FWVP parolees that if their immigrant visa is still unavailable at the time their parole expires, they must apply to USCIS for a re-parole and pay the required fee. Therefore, FWVP program beneficiaries are expected to apply for lawful permanent resident status as soon as their immigrant visa becomes available.

Given these reliance interests, DHS will accept requests for re-parole under the existing standards of the FWVP program.

**Comments:**

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2007-0045 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For

additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of this information collection:**

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Application for Travel Document.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-131; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:  
Primary: Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file

requests for travel permits (transportation letter or boarding foil).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-131 is 379,483 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 75,100 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for passport-style photos is 325,000 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 971,385 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$111,568,002.

Dated: December 18, 2020.

**Joseph Edlow,**

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*U.S. Citizenship and Immigration Services,*

*Department of Homeland Security.*

**BILLING CODE 9111-97**

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