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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A,

FILE: [REDACTED] Office: ORLANDO, FLORIDA

Date: APR 13 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permanent Residence Pursuant to Section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, Florida, denied the application to adjust status and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed.

The applicant is a native and citizen of Colombia who filed this application for adjustment of status to that of a lawful permanent resident. In Part 2, "Application Type," the applicant indicated that she was applying because "I'm the wife of a Cuban resident admitted as NC-6." A review of the record reveals the following facts and procedural history: On December 29, 1998, the applicant entered the United States in B-2 status. On October 13, 2005, the applicant married her present spouse, who is a native and citizen of Cuba, and who adjusted his status to that of a lawful permanent resident in September 2001 pursuant to section 202 of Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA). On May 23, 2008, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS), seeking to adjust her status as the spouse of "a Cuban resident admitted as NC-6."

In a February 17, 2009 decision, the director determined that the applicant was not eligible for adjustment of status for two reasons. First, the director noted that the applicant's spouse, through whom she is seeking adjustment of status, was not inspected, admitted or paroled into the United States and, therefore, was not an alien described in section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. Second, the director noted that, although the applicant was the beneficiary of an approved I-130 Petition filed by her spouse, at the time she filed her Form I-485, her priority date of March 20, 2007 was not current. The director did not discuss the applicant's eligibility under section 202 of NACARA. The director denied the application and certified her decision to the AAO for review. The director informed the applicant that she had 30 days to supplement the record with any evidence that she wished the AAO to consider. The applicant has not submitted any evidence for consideration.

Section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA) states, in pertinent part:

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.--

(1) IN GENERAL.--The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed

* * *

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.--

(1) IN GENERAL.--Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if--

(A) the alien is a national of Nicaragua or Cuba;

- (B) the alien is the spouse, child, or unmarried son or daughter, of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that they have been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under this subsection is filed;
- (C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;
- (D) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply; and
- (E) applies for such adjustment before April 1, 2000.

Section 1 of the CAA provides, in pertinent part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. . . . The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The applicant is not eligible to adjust her status under section 202 of NACARA because she is not a national of Nicaragua or Cuba. Regarding section 1 of the CAA, it is applicable to the spouse and child of any alien described therein. Therefore, the applicant's spouse must establish that he is a native or citizen of Cuba who was inspected and admitted or paroled into the United States, and has been physically present in the United States for at least one year. The record does not indicate that the applicant's spouse is an alien described in section 1 of the CAA because he has never been inspected and admitted or paroled into the United States. The applicant's spouse indicated on his Form I-589 application for asylum that he initially entered the United States without inspection in 1988, and there is no evidence that her spouse was inspected and admitted or paroled into the United States after his initial entry in 1988. Accordingly, the applicant is not eligible to adjust her status under section 1 of the CAA.

Finally, the director was also correct in finding that the applicant could not adjust her status as the spouse of a lawful permanent resident. The applicant is the beneficiary of an approved I-130 filed on her behalf by her spouse. The priority date of her petition is March 20, 2007. At the

time she filed her Form I-485, the applicant's priority date was not current and she, therefore, was not eligible to adjust her status as the spouse of a lawful permanent resident.

The AAO concurs with the director's findings that the applicant was ineligible to adjust her status at the time she filed her Form I-485. Accordingly, the application must be denied. Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. The applicant has not met her burden. Accordingly, the director's decision is affirmed.

ORDER: The director's decision is affirmed. The application is denied.