



AR

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

FILE:



Office: Miami

Date:

MAR 13 2001

IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was not eligible for adjustment of status because she was not inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

In response to the notice of certification, the applicant requests an additional 60 days in which to file a brief. However, it has been more than five months since the request for extension was made and neither a brief nor additional evidence has been received in the record of proceeding. Therefore, the record is considered complete.

The application for adjustment of status, filed on February 27, 1997, shows that the applicant entered the United States at Miami, Florida, on November 9, 1992. Although the applicant claimed in this application that she was paroled into the United States, she also claimed that she was not inspected by an officer of the Service. While the record of proceeding does not contain the applicant's Form I-94, the Service electronic record reflects that the applicant entered the United States without inspection on November 9, 1991 near Brownsville, Texas. Additionally, the application for employment authorization, Form I-765, signed by the applicant on March 8, 1993, reflects that the applicant claimed to have entered the United States without inspection near Brownsville, Texas, on November 9, 1992.

The applicant bears the burden of proving that she in fact presented herself for inspection as an element of establishing eligibility for adjustment of status. Matter of Arequillin, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant failed to establish that she was inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he was not

inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought.

It is noted for the record that the Federal Bureau of Investigation report, contained in the record of proceeding, reflects that on March 19, 1996 in Miami, Florida, the applicant was arrested and charged with possession with intent to deliver cocaine. A conviction of possession and trafficking of a controlled substance may render the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C). However, the arrest report and the final court disposition are not included in the record of proceeding. The Service must address this arrest and/or conviction in any future decisions or proceedings.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. Therefore, the decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.