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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

FILE: [Redacted]

Office: Miami

Date: **AUG 22 2002**

IN RE: Applicant: [Redacted]

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:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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
Robert P. Wiemann, 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 Associate Commissioner affirmed the decision of the district director to deny the application. A subsequent motion to reopen was dismissed by the Associate Commissioner. The matter is again before the Associate Commissioner on another motion to reopen. The motion will be granted and the previous decisions of the district director and the Associate Commissioner 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.

The district director originally denied the application after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(D), based on her arrival in the United States as a stowaway.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion that the applicant was a stowaway, and that there is no waiver available to an alien found inadmissible pursuant to section 212(a)(6)(D) of the Act. He, therefore, affirmed the district director's decision on January 8, 2001.

On June 15, 2001, counsel filed a motion to reopen, citing the new section 1505 of the LIFE Act Amendments to the NACARA 202 or HRIFA, which indicates that an alien who is now eligible for adjustment of status under this amendment may file a motion to reopen his or her case before the Service. Counsel states that the applicant is requesting the Service to reopen her case so that she may file an application under NACARA 202, and to allow her to adjust her status to that of a lawful permanent resident.

The Associate Commissioner reviewed the record of proceeding and determined that the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act, that such application was denied, and there is no evidence in the record that the applicant had applied for adjustment under the NACARA Act. He further noted that on January 8, 2001, he affirmed the district director's decision to deny the application under section 1 of the Cuban Adjustment Act and the petitioner had 30 days from January 8, 2001 in which to file a motion to reopen or a motion to reconsider. Because the motion was received by the Service on June 15, 2001, approximately 5 months after the appeal was dismissed, the Associate Commissioner dismissed the appeal on January 18, 2002.

On February 15, 2002, counsel filed another motion to reopen. He now wants the Service to render a decision consistent with Matter

of Artigas, 23 I&N Dec. 99 (BIA 2001), and to allow the applicant to apply for adjustment of status under the Cuban Adjustment Act.

Matter of Artigas, however, does not relate to the applicant's case. The Board, in Artigas, held that an Immigration Judge has jurisdiction to adjudicate an application for adjustment of status under the Cuban Adjustment Act when the respondent is charged as an arriving alien without a valid visa or entry document in removal proceedings, pursuant to section 212(a)(7)(A)(i)(I) of the Act. The applicant, in this case, was found inadmissible pursuant to section 212(a)(6)(D) of the Act.

The applicant had applied for adjustment of status under the Cuban Adjustment Act on April 30, 1998. That application was denied by the district director on August 27, 2000, after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(D) of the Act based on her arrival as a stowaway for which no waiver is available. On January 8, 2001, the Associate Commissioner affirmed the director's decision to deny the application.

The applicant was a stowaway and she, therefore, remains inadmissible to the United States pursuant to section 212(a)(6)(D) of the Act. The decision of the Associate Commissioner will be affirmed.

ORDER: • The decision of the Associate Commissioner dated January 8, 2001, is affirmed.