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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



FILE:

Office: Miami

Date: 11 DEC 2002

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

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, 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. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, and the previous decision of 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 denied the application after determining that the applicant was not eligible for adjustment of status because she was not inspected and admitted or paroled into the United States.

Upon review of the record of proceeding, the Associate Commissioner determined that the documents contained in the record reflect that the applicant entered the United States without inspection near McAllen, Texas, on November 10, 1986. He, therefore, concurred with the district director's conclusion and affirmed his decision to deny the application on August 28, 2001.

In a motion to reopen, filed with the Service on September 24, 2001, the applicant states that she is once again sending a copy of her parole (Form I-94) given to her by the Immigration Service.

The Form I-94 submitted is not evidence that the applicant was paroled into the United States. Rather, it is a portion of the Record of Deportable Alien (Form I-213), issued to the applicant upon filing of the Form I-589 (application for asylum). The I-94 shows that the applicant had claimed entry into the United States without inspection near McAllen, Texas, on November 10, 1986.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. See Matter of O-, 1 I&N Dec. 617 (BIA 1943); See also Matter of Estrada-Betancourt, 12 I&N Dec. 191 (BIA 1967); Matter of Pierre, 14 I&N Dec. 467 (BIA 1973).

On April 19, 1999, the Commissioner issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present

without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

In this case, there is no evidence in the record that the applicant was taken into custody by the Service and subsequently released. Nor does the Form I-94 bear the standard annotation that shows that the applicant has been paroled under section 212(d)(5)(A). Rather, she was issued Form I-94 indicating that she entered the United States without inspection (EWI).

The applicant has failed to establish that she was inspected and admitted or paroled into the United States. Therefore, she remains ineligible for the benefit sought. The previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated August 28, 2001, is affirmed.