



A2

U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted**

[REDACTED]

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

FILE# [REDACTED] Office: Texas Service Center

Date: 11 DEC 2007

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]

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 Director, Texas Service Center, who certified her decision to the Associate Commissioner, Examinations, for review. The case will be remanded to the director for further action.

The applicant is a native and citizen of Cuba who is seeking to adjust his status to that of a lawful permanent resident of the United States.

The director determined that the applicant was not eligible for adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966, because he entered the United States without inspection. The director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant did not apply for adjustment of status under section 1 of the Cuban Adjustment Act but, rather, he applied under the NACARA Act (section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act).

A review of the application for permanent residence (Form I-485) shows that the applicant checked item "h" of Part 2, "Other-explain," and added: "I am a NATIONAL OF CUBA PRESENT IN US CONTINUOUSLY BEFORE DEC. 1, 1995." Item "e" (section 1 of the Cuban Adjustment Act) was not checked by the applicant.

Accordingly, the case will be remanded in order that the director may readjudicate the application for adjustment of status under section 202 of the NACARA Act. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.