

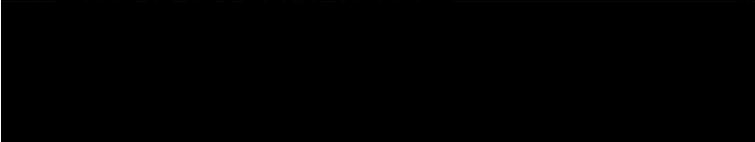


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U.S. Department of Justice
Immigration and Naturalization Service

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invasion of personal privacy**

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



FILE:

Office: Miami

Date:

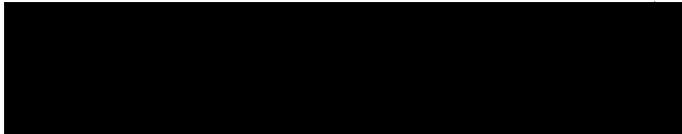
DEC 12 2002

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:



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 Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The acting district director's decision was withdrawn, and the case was remanded for appropriate action. The acting district director again denied the application and certified his decision to the Associate Commissioner for review. The decision of the acting district director will be affirmed.

The applicant is a native and citizen of Nicaragua 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, 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, 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 acting district director originally denied the application after determining that the applicant did not qualify for adjustment of status as the spouse of a lawful permanent resident because her spouse's application for permanent residence under section 1 of the Cuban Adjustment Act had been denied.

Upon review of the record of proceeding, the Associate Commissioner determined that the applicant's case could not be properly adjudicated as the record did not contain any evidence to show that the applicant's spouse [REDACTED] was denied adjustment of status. He, therefore, remanded the case to the acting district director on June 24, 2002.

On July 27, 2002, the acting district director again denied the application after determining that the applicant's Cuban spouse [REDACTED] was denied permanent residence under section 1 of the Act on March 29, 2001, based on his criminal convictions. The current record of proceeding contains the Associate Commissioner's decision, dated March 4, 2002, affirming the acting district director's decision to deny [REDACTED] application because he was inadmissible to the United States pursuant to sections

212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Act.

The Board, in Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a permanent resident pursuant to the provisions of the Act of November 2, 1966, is not available to the spouse of an alien described in section 1 of the Act, where the alien himself had been denied adjustment of status under the Act.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.