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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: [REDACTED]

Office: Miami

Date:

DEC 16 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]

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 will be affirmed.

The applicant is a native and citizen of Honduras who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Act of November 2, 1966 (Cuban Adjustment Act). Section 1 of this Act provides, in 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 determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the Act, because she was not inspected and admitted or paroled into the United States. The acting district director, therefore, denied the application and certified his decision to the Associate Commissioner for review.

Counsel appealed the acting district director's notice of certification. He states that the petitioner's Cuban spouse has filed an N-400, Petition for Naturalization, and also an I-130, Petition for Alien Relative, on behalf of the applicant. Counsel asserts that the Service erred in failing to process and timely inform the applicant of the denial.

Documents contained in the record of proceeding, including the application for adjustment of status, filed on January 30, 2001, reflect that the applicant entered the United States near McAllen, Texas, on January 8, 1995, and that she was not inspected by an officer of the Service upon entry. On March 26, 1998, at Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba and a lawful permanent resident of the United States. On January 30, 2001, the applicant filed for adjustment of her status to permanent residence under section 1 of the Cuban Adjustment Act based on that marriage.



The provisions of section 1 of the Act require that an applicant for adjustment of status, including the spouse and child of any alien described in section 1, must have been inspected and admitted or paroled into the United States, must be eligible to receive an immigrant visa, and must be admissible to the United States for permanent residence. The applicant, in this case, was not inspected and admitted or paroled into the United States. Therefore, she is not eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966.

The decision of the acting district director to deny the application will be affirmed. This decision relates only to the January 30, 2001 application to adjust status under the Cuban Adjustment Act. Any additional applications will be adjudicated separately.

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