

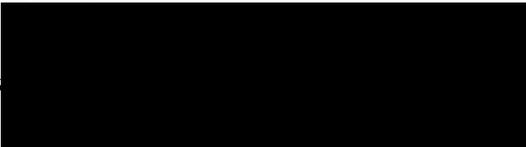


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U.S. Department of Justice

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: JUL 05 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

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 applicant now appeals the decision of the Associate Commissioner. The appeal will be rejected.

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 failed to submit certified copies of her arrest report and court disposition as had been requested. The district director, therefore, denied the application.

Upon review of the record of proceeding, the Associate Commissioner noted that the Federal Bureau of Investigation report shows that the applicant was arrested and charged with grand larceny in Florida on April 3, 1985, and although she was requested on April 3, 2000 to submit the arrest report and final court disposition of all her arrests, she failed to comply with the request, nor did she submit the required documents on notice of certification. Therefore, on April 5, 2001, the Associate Commissioner concurred with the findings of the district director and affirmed his decision to deny the application.

On June 21, 2001, the applicant appealed the decision of the Associate Commissioner to deny the application. She submits a letter of clearance from the Miami-Dade Police Department indicating that a name search of the applicant [REDACTED] reveals no local arrest record. The applicant, however, neither addressed nor submitted the arrest report and court disposition of her arrest on April 3, 1985.

8 C.F.R. 103.3(a)(2)(v)(B)(1), states:

An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record reflects that on April 5, 2001, the Associate Commissioner affirmed the district director's decision to deny the application. The applicant appealed this decision on June 21, 2001, more than two months later. A motion to reopen, rather than an appeal, is the proper forum in this case pursuant to 8 C.F.R. 103.5(a)(1)(i). This regulation provides, however, that any motion to reopen a proceeding before the Service filed by an applicant or petitioner 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 was beyond the control of the applicant or petitioner.

The applicant did not offer an explanation as to the reason for the late filing. Rather, she states that she is attaching a police background check as requested. The appeal was filed more than 30 days (approximately 77 days) after the decision of the Associate Commissioner. The applicant failed to demonstrate that the delay was reasonable and was beyond her control.

Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.