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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 08 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:



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.

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 which 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 which 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 district director's decision 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. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

In response to the notice of certification, the applicant asserts that he applied for adjustment of status under the NACARA (section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act) rather than under section 1 of the Act. He states that unfortunately the counselor he hired to help and to represent him with the application wrongly entered the reason for which he was applying.

The application for adjustment of status, filed on November 9, 1998, shows that the applicant entered the United States near Miami, Florida, on January 4, 1983, and that he was not inspected by an officer of the Service upon entry. Additionally, the application for asylum (Form I-589) filed by the applicant on June 27, 1983, and the I-94 portion of the Record of Deportable Alien (Form I-213) issued on July 18, 1983, both show that the applicant had claimed entry into the United States without inspection near Miami, Florida, on January 4, 1983.

The applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. Matter of Areguillin, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is concluded that the applicant was not inspected and admitted or paroled into the United States and is, therefore, ineligible for adjustment of status under section 1 of the Cuban Adjustment Act. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he was not inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought.



While the applicant states that he applied for adjustment of status under the NACARA Act but his counselor wrongly indicated that he was applying under section 1 of the Act, the application for adjustment in this case has been properly adjudicated. Therefore, the decision of the district director to deny the application will be affirmed.

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