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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



25 JUL 2002

FILE: [Redacted]

Office: Miami

Date:

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:



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
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 found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(E)(i). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(6) of the Act provides, in part:

(E) Smugglers--

(i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

Section 212(d)(11) of the Act, 8 U.S.C. 1182(d)(11), provides that the Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of 212(a)(6)(E)(i) of the Act in the case of an alien seeking admission or adjustment of status if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the applicant was originally paroled into the United States on October 31, 1993. On May 31, 1994, the applicant was apprehended by the United States Coast Guard near Big Pine Key, Florida, while attempting to smuggle 15 Cuban nationals into the United States aboard a 30-foot motorboat. In a sworn statement before an officer of the Service, the applicant admitted

that he and his friend, [REDACTED] departed from the United States on May 30, 1994 and traveled to Cuba in order to bring [REDACTED]'s wife and son to the United States, and that the other Cubans got into the boat at the same time. He stated that within one mile of the shore (Big Pine Key, Florida), the boat broke down and [REDACTED] and one of the Cubans swam to shore to seek help; the Coast Guard arrived and [REDACTED] did not return to the boat. The applicant was detained for a hearing before an immigration judge after being charged with the exclusionary provisions of section 212(a)(6)(E)(i) of the Act.

It is, therefore, concluded that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act. 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. Furthermore, the applicant does not meet the requirements for a waiver of grounds of inadmissibility under section 212(d)(11) of the Act, nor is there evidence that he is eligible to file for a waiver.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.