U.S. Department of Justice

Immigration and Naturalization Service

Washington, D. C. 20536

FILE: Office: Miami

IN RE: Applicant:

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Date :

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

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)(l)(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 $1 10 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Administrative Appe

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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 she was-not inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

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

The application for adjustment of status, filed on January 25, 1999, shows that the applicant entered the United States at Miami, Florida, on August 31, 1987. While the applicant claimed in this application that she was inspected by an officer of the Service, she failed to submit evidence to support her claim that she was in fact inspected upon entry. Further, the application for asylum (Form 1-589) filed by the applicant on August 31, 1987, and the 1-94 portion of the Record of Deportable Alien (Form 1-213) issued on August 31, 1987 upon filing of the Form 1-589, both show that the applicant had claimed entry into the United States without inspection near El Paso, Texas, on August 27, 1987.

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

It is, therefore, concluded that the applicant was not inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that she was not inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought. The decision of the district director to deny the application will be affirmed.

ORDER : The district director's decision is affirmed.