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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE:

[Redacted]

Office: Miami

Date:

8 MAR 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]

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


for 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 Peru 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 (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 district director determined that the applicant did not qualify for adjustment of status as the spouse of a native or citizen of Cuba who adjusted under section 1 of the Cuban Adjustment Act. The district director, therefore, denied the application.

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

The record reflects that on November 29, 1989, the status of the applicant's spouse, [REDACTED] was adjusted to that of a lawful permanent resident as an AS6 (asylee). The record, however, does not contain evidence that [REDACTED] was inspected and admitted or paroled into the United States prior to his adjustment of status to that of an AS6. On March 8, 1997 at Miami Beach, Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on April 25, 1997, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act.

In Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), the Board held that adjustment of status to that of permanent resident pursuant to the provisions of the Cuban Adjustment Act is not available to the spouse of an alien described in section 1 of the Act, where the alien himself has been denied adjustment of status

under the Act. While there is no record to indicate that the applicant's spouse in the present case was denied adjustment of status under section 1, the Board's finding is analogous to this case. The provisions of section 1 require that the Cuban alien, to be eligible for adjustment under this Act, must have been inspected and admitted or paroled into the United States. There is no evidence in this case that the applicant's spouse met this requirement. Rather, he applied for asylum status. His status was adjusted on November 29, 1989 to that of a permanent resident under section 208 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1158. The provisions of section 208 of the Act do not require that an alien be inspected and admitted or paroled into the United States. Because the record does not contain evidence that the applicant's spouse was inspected and admitted or paroled into the United States, he would not be eligible to adjust his status under section 1; therefore, the applicant is not eligible to adjust her status under section 1.

As concluded in Matter of Benguria Y Rodriguez, "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as *nonimmigrants or paroled into the United States*. If this were not correct, then the provision in this section permitting adjustment of status to that of an alien lawfully admitted for permanent residence would be without purpose." 12 I&N Dec. 143, 144 (Reg. Comm. 1967) (emphasis in original). Matter of Benguria Y Rodriguez also notes that section 2 of the Cuban Adjustment Act speaks of "any alien described in section 1" and refers to "the date the alien originally arrived in the United States as a nonimmigrant or as a parolee." Id.

The statute clearly states that the provisions of section 1 of the Cuban Adjustment Act shall be applicable to the spouse and child of any alien described in this subsection. In order that the applicant may be eligible for the benefits of section 1 of the Cuban Adjustment Act, he or she must be the spouse of a native or citizen of Cuba, who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. Matter of Milian, 13 I&N Dec. 480, 482 (Acting Reg. Comm. 1970). In this case, the applicant's spouse is not an alien described in section 1 as there is no evidence in the record that he was inspected and admitted or paroled into the United States prior to his adjustment of status to that of an AS6. He would, therefore, not be eligible for adjustment of status under section 1 of the Cuban Adjustment Act. Therefore, the benefits of section 1 are not available to the applicant.

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



This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The district director's decision is affirmed.