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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: [Redacted]

Office: Miami

Date: 12 MAR 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.

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*  
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 case will be remanded to the director for further action.

The applicant is a native and citizen of Brazil 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, 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 lawful permanent resident who adjusted under section 1 of the Act of November 2, 1966. 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 October 11, 1994, the status of the applicant's spouse [REDACTED] was adjusted to that of a lawful permanent resident as an IR6 (spouse of a United States citizen). On January 20, 1997 at Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on March 20, 1997, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act.

Pursuant to the Cuban Adjustment Act, the spouse and child of "any alien described in this subsection" may adjust status to that of an alien lawfully admitted for permanent residence, regardless of their citizenship and place of birth, if they are residing with such alien in the United States. The record, however, does not establish whether the applicant's spouse is an alien described in section 1 of the Cuban Adjustment Act. [REDACTED] did not adjust his status under section 1 of the Cuban Adjustment Act, but was adjusted instead as a lawful permanent resident based on his

prior marriage to a United States citizen. The record does not establish whether [REDACTED] was inspected and admitted or paroled into the United States prior to his adjustment of status to IR6, or whether he would have been otherwise eligible for adjustment under section 1 of the Act. See Matter of Milian, 13 I&N Dec. 480, 482 (Acting Reg. Comm. 1970).

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.

It is also noted that the record does not establish whether the applicant's spouse has previously applied for adjustment under Section 1 of the Act and whether such an application had been denied. The Board, in Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a 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. If the district director determines that the spouse has been previously denied under the Cuban Adjustment Act, the present case should be denied.

Accordingly, as the record does not establish whether the spouse of the applicant was inspected and admitted as a nonimmigrant or paroled, or whether the spouse of the applicant had been denied adjustment under section 1 of the Act, the case will be remanded to the district director for further review and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

**ORDER:** The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.