



Aa

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



FILE



Office: Miami

Date: MAY 06 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 F. 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 district director for further action.

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 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 May 4, 1988, the applicant's spouse [REDACTED] was conditionally admitted to the United States as a refugee under section 207(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1157(a). His status was subsequently adjusted to that of a lawful permanent resident (as an RE6) as of the date of his arrival in the United States. The record further reflects that the applicant and [REDACTED] both natives and citizens of Cuba, were married in Cuba on December 25, 1978, prior to their entry into the United States. Based on that marriage, on September 18, 1996, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act.

In the present case, the spouse of the applicant was conditionally admitted as a refugee under section 207(a) of the Act, and not as a parolee or nonimmigrant as required by section 1 of the Act of November 2, 1966. See Matter of Garcia-Alzugaray, 19 I&N Dec. 407, 408 (BIA 1986). Accordingly, Mr. Santiago was not an alien as

described in section 1 of the Cuban Adjustment Act. Therefore, the applicant is not eligible for adjustment of status as the spouse of a Cuban who originally arrived in the United States as a nonimmigrant or parolee.

The applicant, however, is a native and citizen of Cuba and she, therefore, falls within the provisions of section 1 of the Cuban Adjustment Act. While the applicant claimed in her application for adjustment of status that she was not inspected by a Service officer upon her entry into the United States on September 20, 1984, the record of proceeding contains a copy of the applicant's Form I-94 reflecting that the applicant was paroled into the United States on September 20, 1984, pursuant to 8 C.F.R. 212.5(a)(2)(v).

The case will, therefore, be remanded in order that the district director may readjudicate the application for adjustment of status. The district director shall enter 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.