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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:

Office: Miami

Date: NOV 13 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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The Associate Commissioner affirmed the decision of the district director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

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.

The acting district director denied the application after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). He noted that the applicant did not possess the requisite family relationship in order to apply for a waiver of inadmissibility. He, therefore, denied the application on August 25, 2001.

On March 28, 2002, the Associate Commissioner affirmed the acting district director's finding that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

On motion, counsel asserts that at the time of the acting district director's decision, the applicant was not eligible for a waiver of the grounds of inadmissibility, however, the applicant married a lawful permanent resident on September 17, 2001, which made him statutorily eligible to seek a waiver. He submits evidence to establish his marriage to a lawful permanent resident alien.

The acting district director was correct in his finding that the applicant was not eligible for a waiver of the grounds of inadmissibility because he did not possess the requisite family relationship at the time he applied for adjustment of status on March 25, 1999. It is noted in the record that at a Service interview on July 20, 2000, the applicant stated that he was engaged to be married. At that time he was advised that once he is married he may file a new Form I-485 application for adjustment of status and also file a waiver (Form I-601) based on his eligibility as the spouse of a lawful permanent resident.

ORDER: The motion to reopen is dismissed. The March 28, 2002 decision of the Associate Commissioner is affirmed.