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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]

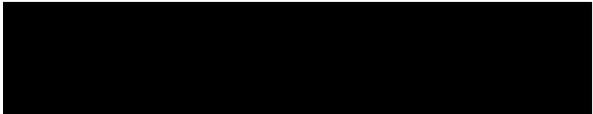
Office: Miami

Date: 16 SEP 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:



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
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 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 Honduras 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 district director denied the application after determining that the applicant was not eligible for adjustment of status pursuant to section 1 of the Cuban Adjustment Act, as the spouse of a native or citizen of Cuba, because she had not fulfilled the two-year foreign residence requirement, nor had she been granted a waiver of that requirement, pursuant to section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e).

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and denied the application on February 15, 2002.

On motion, counsel furnishes a similar, if not the same, brief as that submitted with the original appeal.

Pursuant to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

The record reflects that the district director reviewed the record of proceeding and found that the applicant failed to establish that she qualifies for the benefit sought. The Associate Commissioner also reviewed the record of proceeding and concluded that the applicant had not fulfilled the two-year foreign residence requirement, nor had the applicant been granted a waiver of this requirement pursuant to section 212(e) of the Act. Counsel's arguments raised in his motion to reopen have been addressed by the Associate Commissioner in his decision. The petitioner has presented no new facts or other documentary evidence in support of the motion to reopen.

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.