

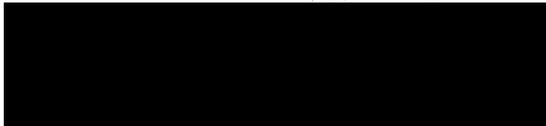


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U.S. Department of Justice

Immigration and Naturalization Service

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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: **SEP 26 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, 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 withdrawn, and the application will be approved.

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. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(E)(i). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

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

Section 212(a)(6) of the Act provides, in part:

(E) Smugglers--

(i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The record of proceeding contains the Service Report of Investigation dated December 29, 1980, indicating that on May 15, 1980, the applicant and [REDACTED] (owner of a boat), brought into the United States four undocumented Cuban aliens. The report indicates that one of the aliens made arrangements with his cousin (the applicant) to be brought to Miami, Florida; that the applicant apparently made arrangements with [REDACTED] to go to Bimini, Bahamas, to pick up the aliens; and that no monetary gain has been established. Exhibit "A" of the Report of Investigation contains the sworn statement of [REDACTED] indicating that he contacted his cousin (the applicant) on several occasions for arrangements to have himself and his family taken from Bimini to Miami, and that he did not pay his cousin or the operator of the boat.

The factors of the investigation report, contained in the record of proceeding, indicates:

There is no proof that SUBJECTS [the applicant and ██████████] did conspire to smuggle undocumented aliens into the United States.

This report made from review of file materials only.

Tardiness is due to excessive workload during the "Cuban Flotilla."

There is no proof in Exhibit "A" that either SUBJECT knew the aliens were coming into the United States illegally.

Based on the investigation report and the sworn statement of ██████████ there is no evidence that the applicant did "knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States." Nor is there evidence in the record that the applicant was detained, arrested, or interviewed based on the claim that the applicant brought into the United States the four undocumented Cuban aliens.

Accordingly, the record does not support a finding that the applicant did knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States as provided in section 212(a)(6)(E) of the Act. The applicant is, therefore, not inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, he is eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, and he warrants a favorable exercise of discretion. The district director did not find the applicant ineligible under any other provisions of the Act. The decision of the district director will be withdrawn, and the application will be approved.

ORDER: The district director's decision is withdrawn. The application is approved.