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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**Identifying data deleted to
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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

FILE: [Redacted]

Office: Miami

Date: AUG 15 2003

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)

ON BEHALF OF APPLICANT:

[Redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office for review. The acting district director's decision will be affirmed.

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 acting district director determined that the applicant failed to submit additional evidence, as had been requested. The acting district director, therefore, denied the application for lack of prosecution.

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

The director noted that the applicant appeared for a scheduled interview regarding his application for adjustment of status on August 29, 2001. On that date, the applicant was requested to submit, by September 28, 2001, a police background check from San Antonio, Texas, and the arrest report and court disposition of his arrest on June 28, 1996. Because the applicant failed to respond to the request, the acting district director denied the application due to lack of prosecution.

Although the record of proceeding contains the June 30, 1996 arrest report for deadly conduct and possession of prohibited weapon, and the court disposition of his conviction of prohibited knife, the applicant failed to submit the court disposition of his conviction of deadly conduct. Nor did the applicant furnish a police background check from San Antonio, Texas, as had been requested.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. He has failed to meet that burden. Therefore, the decision of the acting district director to deny the application, based on lack of prosecution, will be affirmed.

ORDER: The acting district director's decision is affirmed.