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

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

*AD*



FILE



Office: Texas Service Center

Date:

**DEC 10 2003**

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)

ON BEHALF OF APPLICANT: Self-represented

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 Citizenship and Immigration Services (CIS) 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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, who certified her decision to the Associate Commissioner, Examinations, for review. The director's decision will be withdrawn, and the application will be approved.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 states, in pertinent 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 director denied the application after determining that the applicant was not eligible for adjustment of status because she entered the United States with a fiancée visa, pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), and that she failed to conclude a valid marriage with the petitioner of her I-129F; therefore, she had not been successfully admitted into the United States.

In response to the notice of certification, the applicant states that the petitioner refused to marry her after her arrival in the United States, and that it was not her intention to violate section 101(a)(15)(K).

The record reflects that the applicant was born in Cuba on April 22, 1968, to a Cuban mother and a Cuban father. Based on an approved Form I-129F fiancée petition, the applicant was inspected and admitted into the United States as a K-1 on April 20, 2001, and was authorized to remain for 90 days to conclude a valid marriage with Pedro Enriquez, the petitioner of the Form I-129F. On March 15, 2002, at Hialeah, Florida, the applicant married Jose Martin, not the petitioner of the I-129F.

The director noted that an alien who entered under section 101(a)(15)(K) of the Act is subject to subsection (d) of section 214 of the Act which reads, in pertinent part: "In the event the marriage with the petitioner does not occur within three months after admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so

shall be removed in accordance with sections 240 and 241." He further noted that, as defined in section 101(a)(13)(A) of the Act, "the terms 'admission' and 'admitted' mean, with the respect to an alien, the lawful entry of the alien into the United States..." The director maintained that:

Failure to fulfill section 101(a)(15)(K) of the Act in order to circumvent immigration laws results in an unlawful entry of an alien into the United States. The Cuban Adjustment Act in a limiting agent to Section 1 states that "the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization". You have not been successfully admitted into the United States.

The director cited no authority to support her assertion that failure to fulfill section 101(a)(15)(K) of the Act in order to circumvent immigration laws results in an unlawful entry. Being subject to removal proceedings does not change the fact that an alien was lawfully admitted. The fact that the applicant did not comply with the requirements for her admittance does not alter that fact. It is no different than an alien admitted as a student who does not attend school or a visitor who obtains employment. They may be removable, but, they are still considered admitted.

Section 245(d) of the Act states, in pertinent part:

The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) [1101] (relating to an alien fiancée or finance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

It is clear from Service regulations and from the statute that an alien admitted to the United States under the provisions of section 214 of the Act is subject to removal proceedings if the marriage with the petitioner does not occur within three months after admission of the said alien. Nor is the applicant eligible for adjustment of status under sections 245 or 216 of the Act. The applicant, however, is applying for adjustment of status to permanent residence under section 1 of the Cuban Adjustment Act and not under sections 245 or 216 of the Act.

The applicant, in this case, was born in Cuba. She is, therefore, a native of Cuba, she was inspected and admitted into the United States subsequent to January 1, 1959, and she has been physically present in the United States for at least one year. She is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

Accordingly, the director's decision will be withdrawn, and the application will be approved.

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