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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

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

[REDACTED]

FILE:

[REDACTED]

Office: Miami

Date:

DEC 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]

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 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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on certification. 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 (CAA) 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 found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I). The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, counsel asserts that the denial by the Service relies on "some document signed by the applicant wherein she acknowledged understanding of ineligibility to adjust status based on the so-called 3-10 year bars." He further asserts that the applicant vehemently opposes such allegations and has executed an affidavit under penalty of perjury refuting the idea that anyone explained to her the repercussions of the departure. He further asserts that the Department of Homeland Security should be estopped from denying the applicant's benefits based on affirmative misconduct in issuing the travel permit.

The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted through regulations

at 8 C.F.R. 103.1(f)(3)(iii). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

Pursuant to section 212(a)(9)(B)(i)(I) of the Act, any alien (other than an alien lawfully admitted for permanent residence) who--

was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal...is inadmissible.

The record reflects that the applicant entered the United States as a visitor on July 29, 2000, and was authorized to remain until January 28, 2001. The acting district director noted that the applicant remained in the United States beyond January 28, 2001 without Service authorization. The applicant filed for adjustment of status, pursuant to section 1 of the CAA, on September 10, 2001, and subsequently filed an application for a travel document, Form I-131, on April 2, 2002. The acting district director further noted that the applicant was advised in writing and orally that if she left the United States, even with permission from the Service, she may be inadmissible under section 212(a)(9)(B)(i) of the Act upon her return to the United States, and that the applicant, in fact, signed a document indicating that she understood the consequences of traveling abroad if she had unlawful presence. The record reflects that the applicant departed from the United States with an approved I-131, and she returned on August 26, 2001, thus establishing unlawful presence from January 29, 2001 until September 10, 2001 when she filed her adjustment application.

The applicant, in response to the notice of certification, states that she received an appointment from the Texas Service Center asking her to visit the Service on June 3, 2002, to pick up her travel document. She was accompanied by her nephew who speaks English, but was told that only applicants could go in. She further states that there were approximately 50 to 60 people waiting to obtain their travel permits, and upon calling her turn, the officer said "sign here" which she did and he later said, "have a good trip." The applicant claims that she was given no warning whatsoever regarding the consequences of traveling abroad, and had she been told, even at the risk of her daughter's health,

she would not have prejudiced her residency application by traveling to Cuba. She added that any paper given to her to sign was simply not explained to her.

The record of proceeding, however, shows that the applicant appeared at the Miami Service office on May 30, 2002, regarding her application for a travel document. On that date, the applicant was interviewed and advised in writing and orally that if she left the United States, even with permission from the Service, she may be found inadmissible to the United States, pursuant to section 212(a)(9)(B)(i) of the Act, upon her return to the United States. The applicant signed the document on May 30, 2002, indicating that she understood the consequences of traveling abroad. She was issued another appointment letter in order to return to the Service office on June 3, 2002, at 11:00 a.m., to pick up her travel document. The applicant signed for receipt of the travel document on June 3, 2002. There is no evidence in the record that the applicant advised the officer that she did not understand what she was signing.

As determined by the acting district director, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i)(I) of the Act. The acting district director noted that the applicant did not possess the prerequisite family relationship to apply for a waiver of inadmissibility.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

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