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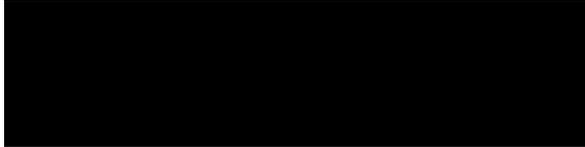
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE:



Office: Texas Service Center

Date:

DEC 16 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:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office for review. The director's decision will be withdrawn, and the application will be approve.

The applicant is a native of Cuba and citizen of Canada 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 director determined that the applicant was ineligible for the benefit sought because she failed to establish that she was lawfully admitted or paroled into the United States, and that she was physically present in the United States for a least one year.

In response to the notice of certification, counsel asserts that according to a Department of State cable, 98 State 207961, a State Department Advisory Opinion states that a Canadian, or Commonwealth Citizen Resident in Canada, admitted following inspection, who has not been issued an I-94, should be treated in the same manner as an alien admitted for duration of status, similar to F or J nonimmigrants. Counsel states that the applicant was unable to provide evidence of admission or parole into the United States because she did not receive them upon entry.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The application shows that the applicant claims to have entered the United States on January 15, 2001 at Ft. Lauderdale, Florida.

Furnished with her application is a copy of her Canadian passport containing a U.S. visa issued in Montreal, Canada on March 1, 1996, with an expiration date of February 2, 2006. The Visa Type/Class issued shows "R BCC" (Border Crossing Card). She also submits a copy of her Cuban passport; a copy of the airline ticket reflecting her departure from Montreal at 10:30 p.m. on January 14, 2001, and arrival at Ft. Lauderdale at 1:50 a.m. on January 15, 2001; and a copy of her boarding pass for this flight.

Because the applicant failed to establish that she was inspected and admitted or paroled into the United States on the date of her claimed arrival on January 14, 2001, she was requested on October 8, 2002, to submit evidence that would establish an admission or parole into the United States, such as a copy of her Form I-94 Arrival and Departure Document, or a copy of the inspection stamp placed on the pages of her passport.

In response, the applicant claims that when she arrived at Ft. Lauderdale International, her passport was scanned by a Service officer, and that at no time were she and the passengers given Forms I-94 to fill out since they were on a Canadian flight coming from Montreal. She states that per an agreement between Canada and the U.S.A., all she needed was a valid travel document.

The Service Inspector's Field Manual, Section 15.1(b), states:

(4) Exemptions to Form I-94 Requirements. A Form I-94 is not required for the following classes of nonimmigrants:

(A) A Canadian national or other nonimmigrant described in 8 C.F.R. § 212.1(a) or 22 C.F.R. § 41.33 admitted as a visitor for pleasure or business or in transit through the U.S.

Section 15.1(b) further states, in part:

Issue an I-94 to each Canadian nonimmigrant (or Canadian landed immigrant) entering for other than visits for business or pleasure (B1 or B2).

The applicant, in this case, arrived in the United States from Canada as a visitor, with a Canadian passport and a U.S. visa. Based on section 15.1 of the Inspector's Field Manual, it is, therefore, reasonable to conclude that the applicant was not

issued a Form I-94 upon her arrival in the United States. The applicant furnished a copy of her airline ticket and boarding pass to establish that she arrived in the United States on January 15, 2001, as claimed. She also submits numerous documents to establish that she was residing in the United States for more than one year prior to the filing of her application.

The applicant is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The director did not find the applicant ineligible under any other provisions of the Act. 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.