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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

**PUBLIC COPY**



FILE:  Office: Newark Date: **FEB 03 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)

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

IN 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 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 that 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, Newark, New Jersey, who certified her decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Colombia who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Act of November 2, 1966 (Cuban Adjustment Act). Section 1 of this Act provides, in 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

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

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

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

The record reflects that during the applicant's interview on August 20, 2001, she was given a notice (Form I-72) to submit evidence within 120 days to establish that she was inspected and admitted or paroled into the United States. Because the applicant failed to respond to the request, the district director denied the application due to lack of prosecution and certified her decision to the Associate Commissioner.

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 she is eligible for adjustment of status. She has failed to meet that burden. Therefore, the decision of the district director to deny the application based on abandonment, in accordance with 8 C.F.R. 103.2(b)(13), will be affirmed.

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