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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: Texas Service Center

Date: JAN 30 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)

IN BEHALF OF APPLICANT: Self-represented

**identifying data deleted to
prevent unauthorized disclosure
invasion of personal privacy**

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 Director, Texas Service Center, who certified her decision to the Associate Commissioner, Examinations, for review. The 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, 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 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 director determined that the applicant had not been physically present in the United States for at least one year prior to the filing of the application. The director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant states that due to an error on her part, she had checked the wrong category on her Form I-485 application. She indicates that she should have checked "Section (F) and Section (J)."

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 record reflects that the applicant was admitted to the United States with a V-3 nonimmigrant visa on October 9, 2001. On June 3, 2002, approximately eight months after her admission, the applicant filed an application for adjustment of status under section 1 of the Cuban Adjustment Act.

As determined by the director, the applicant has not demonstrated that she was physically present in the United States for one year at the time of filing the adjustment application as required.

The applicant, in response to the notice of certification, states that she erroneously checked the wrong category on the Form I-485 application, and that she should have checked section f (husband, wife or minor unmarried child of a Cuban), and section j (husband, wife or minor unmarried child of a Cuban and meet the description in (f)). The provisions of section 1 of the Act require that an applicant for adjustment of status, **including the spouse and child** of any alien described in section 1, must have been inspected and admitted or paroled into the United States, and physically present in the United States for at least one year. The applicant is not eligible for adjustment of status as the minor unmarried child of a Cuban (section f of the application) because she had not been physically present in the United States for at least one year at the time of filing the adjustment application, as required.

The applicant is, therefore, ineligible for the benefit sought. Accordingly, the decision of the director to deny the application will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, now that the applicant has been physically present in the United States for at least one year.

ORDER: The director's decision is affirmed.