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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

[redacted]

JAN 30 2003

FILE [redacted] Office: Miami Date:

JAN 30 2003

IN RE: Applicant: [redacted]

JAN 30 2003

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:

[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 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 Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Venezuela 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 acting district director determined that the applicant did not qualify for adjustment of status because her spouse's application for permanent residence, under section 1 of the Cuban Adjustment Act, had been denied based on his entry into the United States without inspection.

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

The record reflects that on July 27, 2000, at Hialeah, Florida, the applicant married Pedro Abreu, a native and citizen of Cuba. Based on that marriage, on March 19, 2001, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act.

The Board, in Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a permanent resident pursuant to the provisions of the Act of November 2, 1966, is not available to the spouse or child of an alien described in section 1 of the Act, where the alien himself/herself had been denied adjustment of status under the Act.

The district director, in this case, denied the application after determining that the applicant's Cuban spouse (Mr. Abreu) was denied permanent residence, under section 1 of the Act, because he entered the United States without inspection.

The Associate Commissioner reviewed the record of proceeding and affirmed the acting district director's finding that Mr. Abreu was not inspected and admitted or paroled into the United States. Therefore, on December 10, 2002, the Associate Commissioner affirmed the acting district director's decision to deny Mr. Abreu's application.

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

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