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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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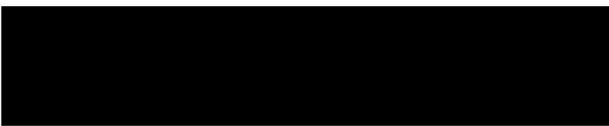


FILE:  Office: Miami Date: **JUN 09 2003**

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:



PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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 F. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The case will be remanded to the acting district director for further action.

The applicant is a native and citizen of Cuba who is seeking to adjust his status to that of a lawful permanent resident of the United States.

The acting district director determined that the applicant was not eligible for adjustment of status, under section 1 of the Cuban Adjustment Act of November 2, 1966, because he was not inspected and admitted or paroled into the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the director's denial is based on a trivial error. He states that on forms submitted to the Service, (I-765, G-325A, IRS 9003, and the I-485), the applicant clearly marked at the top of the forms "NACARA." However, because the applicant did not check "Other-explain" on box h of the I-485, the Service determined that he was not applying for relief under NACARA (section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act). Counsel reiterates that this is a trivial error because it was clearly marked on the forms. He submits copies of the forms listed above and filed with the Service on January 4, 1999.

A review of the application for permanent residence (Form I-485) shows that the applicant marked "NACARA" on the upper right hand corner of every page of the form. The word was also highlighted with a yellow marker on the first page. Additionally, as stated by counsel, the supporting forms filed with the Form I-485 are marked with the word "NACARA."

As it appears that the applicant filed his application for adjustment of status under NACARA, the case will, therefore, be remanded in order that the acting district director may re-adjudicate the application for adjustment of status under section 202 of NACARA. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.

ORDER: The acting district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.