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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: Miami Date: SEP 30 2003

IN RE: Applicant: [redacted]

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:

[redacted]

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 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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district 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 (CAA). 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 acting district director determined that, at the time of filing the application for adjustment, the applicant had not been physically present in the United States for one year after having been paroled or admitted. The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, counsel asserts that the Act does not require that the applicant be paroled for more than one year prior to her application to adjust status. He further asserts that the applicant's 1982 release on recognizance constituted a parole; therefore, she qualifies for adjustment at this time.

The record reflects that the applicant, together with her father, entered the United States without inspection near San Ysidro, California, on October 6, 1982. On November 8, 1982, the applicant's father filed a Request for Asylum (Form I-589). The applicant was included in the Form I-589. On October 19, 2001, the applicant was paroled into the United States pending removal proceedings. On November 19, 2001, one month after her parole, the applicant filed the application for adjustment of status under section 1 of the CAA.

On April 19, 1999, the Commissioner issued a memorandum setting forth the Service's policy concerning the effect of an alien's

having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

Counsel's claim that the applicant was paroled in 1982 when she was released on recognizance is not persuasive. There is no evidence in the record that the applicant surrendered herself into Service custody subsequent to her entry without inspection on October 6, 1982, or on November 8, 1982 when her father filed the asylum application, and that the Service released her from custody pending a final determination of her admissibility. Nor did counsel submit any evidence to establish that the applicant was released on recognizance in 1982 as claimed.

The record, in this case, shows that on October 12, 2001, the applicant was paroled into the United States pending removal proceedings. Despite counsel's assertion that "the Act Does Not Require That Ms. [redacted] Have Been Paroled For More Than One Year Prior to Her Application to Adjust," section 1 of the CAA 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. Furthermore, the attachment to the Commissioner's policy memorandum of April 19, 1999 states that, "an alien may not apply for permanent residence under the 1966 Cuban Adjustment Act until at least a year has passed since the alien's admission or parole."

Consequently, at the time of filing the adjustment application, the applicant was not physically present in the United States for one year from the date of her parole. She is, therefore, ineligible for the benefit sought. The acting district director's decision 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 subsequent to her parole.

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